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SCHOOL LAWS OF IOWA

FROM THE CODE OF 1873.

AS AMENDED BY THE FIFTEENTH, SIXTEENTH, SEVENTEENTH, EIGHTEENTH, NINETEENTH, TWENTIETH, TWENTY-FIRST, TWENTY-SECOND, TWENTY-THIRD AND TWENTY-FOURTH GENERAL ASSEMBLIES,

WITH

NOTES AND FORMS

FOR

THE USE AND GOVERNMENT OF SCHOOL OFFICERS.

EDITION OF 1892.

J. B. KNOEPFLER,

SUPERINTENDENT OF PUBLIC INSTRUCTION.

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When any school officer is superseded by election or otherwise, he shall immediately deliver to his successor in office, all books, papers, and moneys pertaining to his office, taking a receipt therefor; and every such officer who shall refuse to do so, or who shall willfully mutilate or destroy any such books or papers, or any part thereof, or shall misapply any moneys entrusted to him by virtue of his office, shall be liable to the provisions of the general statutes for the punishment of such offense.—SECTION 1791, CODE.

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PREFACE.

This edition is prepared and sent out in compliance with section 1579 of the Code, as amended. The text contains all the enactments now in force referring directly to school matters.

It is the intention of the law that every member of the board shall have a copy of the school law for his official use and to transmit to his successor in office.

A little change has been made in the arrangement of the laws. Enactments of the general assembly since the Code of 1873, are published in close relation to those sections with which they have a logical connection, instead of following chronologically as heretofore. It is believed this will save confusion, and be a convenience to all having occasion to consult the school laws.

The explanatory notes have been carefully revised, and also extended in number, so as to include a larger variety of different particulars. When it is remembered that these notes must of necessity be greatly condensed in order to make room for so many, the reason for their brevity in some cases will be understood. While these opinions reflect the gathered experience of many years, it must not be presumed that the conclusions stated are to be received as having in any proper sense the force of law, except when based upon decisions of courts or opinions from the attorney-general, which is oftener the case than can well be mentioned in connection with each note.

Reference is frequently made to decisions by our supreme court. The Iowa reports may be consulted at the court house in each county seat. A mention of School Law Decisions means the decisions in appeal cases, of which one copy is supplied to the secretary of every board, in order that each district may have the use of a copy at all times.

To prevent confusion and to promote uniformity it is advisable that all former laws be laid aside, and that this edition of 1892 be the only

one referred to, as it contains the law by which all school officers should now be governed.

We believe a careful study of this volume, so as to become more and more familiar with its contents, will prove a great advantage to any one whose duty it is to assist in carrying into effect the provisions of the school law.

It is but simple justice to state that the work of arranging and revising the notes, and editing both the laws and the decisions, has been almost wholly the personal duty of Mr. Ira C. Kling. His experience of more than nine years in all as deputy in this office, peculiarly fits him for this duty, and his well-known painstaking care is the best guarantee we can offer that the work has been thoroughly and conscientiously done. In the proof reading he has had the loya. and careful assistance of Miss Kate M. Jones, clerk in the office.

J. B. KNOEPFLER,
Superintendent of Public Instruction.

Des Moines, Iowa, July 1, 1892.

SCHOOL LAWS OF IOWA.

FROM THE CODE AS AMENDED BY THE FIFTEENTH, SIXTEENTH, SEVENTEENTH, EIGHTEENTH, NINETEENTH, TWENTIETH, TWENTY-FIRST, TWENTY-SECOND, TWENTY-THIRD AND TWENTY-FOURTH GENERAL ASSEMBLIES.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

SECTION 1577. The superintendent of public instruction shall be charged with the general supervision of all the county superintendents and all the common schools of the state. He may meet county superintendents in convention at such points in the state as he may deem most suitable for the purpose, and by explanation and discussion endeavor to secure a more uniform and efficient administration of the school laws. He shall attend teachers' institutes in the several counties of the state as far as may be consistent with the discharge of other duties imposed by law, and assist by lecture or otherwise in their instruction and management. He shall render a written opinion to any school officer asking it, touching the exposition or administration of any school law, and shall determine all cases appealed from the decision of county superintendents.

SEC. 1578. An office shall be provided for him at the seat of government, in which he shall file all papers, reports, and public documents transmitted to him by the county superintendents, each year separately, and hold the same in readiness to be exhibited to the governor, or to a committee of either house of the general assembly, at any time when required; and he shall keep a fair record of all matters pertaining to his office.

SEC. 1579. (As amended by Chap. 150, Laws of 1880, and Chap. 59, Laws of 1888.) After the adjournment of the eighteenth general assembly, and every four years thereafter, if deemed necessary, he may cause

SECTION 1577. This department is glad to assist in every way, in securing a more uniform and satisfactory administration of school affairs. The established custom of answering all proper inquiries, whether from school officers or others, touching the construction and application of the school laws, will be continued.

SEC. 1578. All valuable correspondence is filed for preservation, letterpress copies of our answers being taken for that purpose. It is obvious that a request to return the letter of inquiry with our reply, can not be complied with.

to be printed and bound in cloth the school laws and all amendments thereto, with such notes, rulings, forms and decisions as may seem of value to aid school officers in the proper discharge of their duties. Appropriate reference shall be made to the previous law that has been amended or changed, so as clearly to indicate the effect of such amendments or changes. He shall send to each county superintendent a number of copies sufficient to supply each school district in his county with one copy of such school laws, with decisions. He shall also cause to be printed and bound in paper covers the school laws, with notes and with forms necessary to be used in carrying out the school laws; provided, that he shall furnish each of the members of the boards of directors with one copy of the laws bound in paper covers, which shall be turned over to their successors in office. After such sessions of the general assembly as the state superintendent shall not deem it necessary to publish the laws as provided for in this section, he shall cause to be published in pamphlet form all the amendments to the school laws passed by such general assembly, in sufficient numbers to supply each of the county superintendents and school officers of the state with one copy free of charge, which said amendments shall be sent to the several county superintendents for distribution.

SEC. 1580. (Repealed by Chap. 102, Laws of 1878.)

SEC. 1581. He may, if he deem it expedient, subscribe for a sufficient number of copies of the Iowa School Journal, or of such other educational journal published in the state as he may select, to furnish each county superintendent with one copy, and his certificate of having thus subscribed shall be authority for the auditor of state to issue his warrant for the amount of said subscriptions; provided he shall cause to be inserted in the journal he may so select, a correct copy of any decision he may deem it necessary to make for the efficient carrying out of the school law.

SEC. 1582. He shall annually, on the first day of January, report to the auditor of state the number of persons in each county between the ages of five and twenty-one years.

SEC. 1583. (As amended by Chap. 82, Laws of 1888.) He shall make to the governor a report which shall embrace, first, a statement of the condition of the common schools of the state; the number of district townships and subdistricts therein; the number of teachers; the number of schools; the number of school-houses, and the value thereof; the number of persons between five and twenty-one years of age; the number of scholars in each county that have attended school the previous year, as returned by the several county superintendents; the number of books in the district libraries; and the value of all apparatus in the schools, and such other statistical information as he may

deem important. Second, such plans as he may have matured for the more perfect organization and efficiency of common schools. He shall cause one thousand copies of his report to be printed, and shall present it to the general assembly on the second day of its session.

SEC. 1584. Whenever reasonable assurance shall be given by the county superintendent of any county to the superintendent of public instruction, that not less than twenty teachers desire to assemble for the purpose of holding a teachers' institute in said county, to remain in session not less than six working days, he shall appoint the time and place of said meeting and give due notice thereof to the county superintendent; and for the purpose of defraying the expenses of said institute, there is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, a sum not exceeding fifty dollars annually for one such institute in each county held as aforesaid, which the said superintendent shall immediately transmit to the county superintendent in whose county the institute shall be held, who shall therewith defray the necessary expenses of the institute, and, if any balance remains, he shall pay the same into the county treasury, and the same shall be credited to the teachers' fund.

CHAPTER 129, LAWS OF 1876.

(As amended by Chap. 142, Laws of 1878, and Chap. 64, Laws of 1888.)

STATE NORMAL AND TRAINING SCHOOL.

SECTION 1. A school for the special instruction and training of teachers for the common schools of this state is hereby established at Cedar Falls, in Black Hawk county.

SEC. 2. The school shall be under the management and control of a board of directors consisting of six members, no two of whom shall be from the same county, and the superintendent of public instruction shall be ex-officio a member of said board and president thereof. The board of directors shall be elected by the general assembly, two for two years, two for four years, and two for six years, and the general assembly shall elect two members of said board every two years, for the full term of six years as the terms of office of the respective classes expire. Their term of office shall commence on the first day of June following their election. No member of the board shall be a teacher in the school, or receive other compensation for his services, than a reimbursement of his actual expenses, to be certified to by him and paid out of the state treasury. Any vacancy occurring in the board shall be filled by the appointment of the governor.

SEC. 3. The board shall convene, at the call of the superintendent of public instruction, on or before June 15, 1876, and having each qualified,

CHAPTER 129. Complete information may be secured by addressing the president of the school, at Cedar Falls.

according to law, shall organize by the election of a vice-president from their number, and a secretary and a treasurer, who shall be persons not members of the board. The secretary shall receive such compensation as may be fixed by the board not to exceed the sum of one hundred dollars and actual traveling expenses. The treasurer shall receive no compensation but shall receive reimbursement of actual expenditures.

SEC. 4. The board shall require a bond, in the sum of twenty thousand dollars, of the treasurer with proper and sufficient sureties, conditional for the safe-keeping of funds coming into his hands. He shall receive and disburse all moneys hereby appropriated, and any other funds as the board may provide. The board may require of any officer or employe, who may be authorized to receive or pay out money, a like bond.

SEC. 5. It shall be the duty of the board, in every necessary manner with the means at their disposal, to provide for and carry out the object for which the school is established. For that purpose they shall employ competent and suitable teachers and other employes. They shall direct, use, and control all the property of the state coming into their hands for that purpose. They shall control and direct the expenditures of all moneys. They shall make all necessary rules for the management of the school and the government thereof, and shall provide for the admission of pupils from the several counties of the state in proportion to their respective population, and upon the appointment of respective boards of supervisors, or as the board may direct. They shall establish and publish uniform rules for the admission of pupils thereto, and such rules shall provide for equal rights in said school, to all the teachers in the state, but they shall require in all cases satisfactory evidence of the good character of the pupil. They shall also further require all pupils upon their admission to the school, to sign a statement of their intention in good faith to follow the business of teaching in the schools of the state. It shall also be the duty of the board to make all possible and necessary arrangements with the means at their disposal, for the boarding and lodging of pupils, but the pupils shall pay the cost of the same. They shall require each pupil to pay a fee for contingent expenses amounting to not more than one dollar per month. The school shall be open during such part of the year as the board shall determine but the session shall continue at least twenty-six weeks. The board of directors may in their discretion charge the pupils with a tuition fee not exceeding six dollars per term, if such charge shall be necessary in order to the proper support of the school, as provided by law.

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SEC. 9. The said board shall make, at the end of each school year, to the governor a detailed report of their proceedings during the year. Their report shall also contain the number of teachers employed in the

school, with the compensation of each; the number of pupils, classified; the amount of receipts and expenditures, and the items thereof, with such other information and recommendations as they may deem expedient, which report shall be embodied in the superintendent's report to the general assembly.

STATE UNIVERSITY.

SECTION 1585. The objects of the state university, established by the constitution, at Iowa City, shall be to provide the best and most efficient means of imparting to young men and women on equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications. The university, so far as practicable, shall begin the courses of study in its collegiate and and scientific departments, at the points where the same are completed in high schools; and no student shall be admitted who has not previously completed the elementary studies, in such branches as are taught in the common schools throughout the state.

SEC. 1586. The university shall never be under the exclusive control of any religious denomination whatever.

SEC. 1587. (As amended by Chap. 147, Laws of 1876, and Chap. 181, Laws of 1886.) The university shall be governed by a board of regents, consisting of the governor of the state, who shall be president of the board by virtue of his office, the superintendent of public instruction, who shall be a member by virtue of his office, together with one person from each congressional district of the state, who shall be elected by the general assembly.

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SEC. 1589. The university shall include a collegiate, scientific, normal, law, and such other departments, with such courses of instruction and elective studies as the board of regents may determine; and the board shall have authority to confer such degrees, and grant such diplomas and other marks of distinction as are usually conferred and granted by other universities.

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SEC. 1596. The board of regents shall enact laws for the government of the university, and shall appoint a president and the requisite number of professors and tutors, together with such other officers as they may deem expedient, and shall determine the salaries of such officers, the compensation of the secretary and treasurer, and the amount of fees to be paid for tuition. They shall remove any officer connected with the university, when, in their judgment, the good of the institution requires it.

SEC. 1597. The board of regents is authorized to expend such portion of the income of the university fund as it may deem expedient, in the purchase of apparatus, library, and a cabinet of natural history, in providing suitable means to keep and preserve the same, and in procuring all other necessary facilities for giving instruction.

SEC. 1598. All specimens of natural history and geological and mineralogical specimens, which are or hereafter may be collected by the state geologist of Iowa, or by any others appointed by the state to investigate its natural history and physical resources, shall belong to and be the property of the state university, and shall form a part of its cabinet of natural history, which shall be under the charge of the professor of that department.

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SEC. 1600. The president of the university shall make a report on the fifteenth day of September preceding the meeting of the general assembly, to the board of regents, which shall exhibit the condition and progress of the institution in its several departments, the different courses of study pursued therein, the branches taught, the means and methods of instruction adopted, the number of students, with their names, classes, and residences, and such other matters as he may deem proper to communicate.

SEC. 1601. (As amended by Chap. 82, Laws of 1888.) The board of regents shall, on the first day of October preceding each regular meeting of the general assembly, make a report to the superintendent of public instruction, which report, with that of the president of the university, shall be embodied in the said superintendent's report to the governor. The report of the board of regents shall contain the number of professors, tutors, and other officers, with the compensation of each, the condition of the university fund, and the income received therefrom, the amount of expenditures, and the items thereof, with such other information and recommendations as they may deem expedient to lay before the general assembly.

STATE AGRICULTURAL COLLEGE AND FARM.

SECTION 1604. (As amended by Chap. 76, Laws of 1884.) The lands, rights, powers, and privileges granted to and conferred upon the state of Iowa by the act of congress entititled, "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2, 1862, are hereby accepted by the state of Iowa, upon the terms, conditions and restrictions contained in said act, and there is hereby established an agricultural college and model farm, to be connected with the entire agricul-

SEC. 1600. Full information can be secured by addressing the president, at Iowa City, mentioning the particular department regarding which information is desired.

tural and mechanical interests of the state; the said college and farm to be under the control and management of a board of trustees, consisting of one person from each congressional district of the state. But the present board of trustees shall continue as members of the board of trustees from their several congressional districts until their terms of office expire.

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SEC. 1606. The board of trustees shall have power: 1. To elect a chairman from their own number, a president of the college and farm, a secretary, a treasurer, professors and other teachers, superintendents of departments, a steward, a librarian, and such other officers as may be required for the transaction of the business of the board; also to fix the salaries of officers and prescribe their duties; and to appoint substitutes who shall discharge the duties of such officers during their temporary absence;

2. To manage and control all the property of the college and farm, whether real or personal;

3. To make rules and regulations for the government of the college and farm;

4. (As amended by Chap. 119, Laws of 1876.) To establish rules regulating the number of hours which shall be devoted to manual labor, and to fix the compensation therefor; provided no student shall be exempt from labor except in cases of sickness or other infirmity, or where students from the advanced classes may be employed as teachers;

5. To arrange courses of study and practice, and to establish such professorships as they may deem best to carry into effect the provisions of this chapter; also to prescribe conditions of admission to the college;

6. To grant diplomas, on the recommendation of the faculty, to any student who has completed either of the industrial courses prescribed by said board, or an equivalent thereof;

7. To remove any officer by a majority vote of all the members of the board of trustees;

8. To direct the expenditure of all appropriations which the general assembly shall from time to time make to said college and farm, and the income arising from the congressional grant, and from all other sources;

9. To keep a full and complete record of their proceedings, and to do such other acts as are found necessary to carry out the intent and meaning of this chapter.

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SEC. 1610. (As amended by Chap. 159, Laws of 1876.) The college year shall begin on Thursday after the second Wednesday in November of each year, and end on the second Wednesday of November of the following year. The biennial report of the board of trustees shall be filed in the office of the governor, not later than the first day of December preceding the regular meeting of the general assembly.

SEC. 1611. The president of the college and farm shall control, manage and direct the affairs of the college and farm herein established, subject to such rules as may be prescribed by the board of trustees, and shall report to said board at their annual meeting in November, and at such other times as they shall direct, all his acts as such president, and the condition of the several departments of the college and farm, together with his recommendations for the future management thereof.

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SEC. 1619. Tuition in the college herein established shall be forever free to pupils from this state over sixteen years of age, who have been residents of the state six months previous to their admission. Each county in this state shall have a prior right to tuition for three scholars from such county, the remainder equal to the capacity of the college shall be by the trustees distributed among the counties in proportion to the population, subject to the above rule. Transient scholars otherwise qualified may at all times receive tuition.

SEC. 1620. No person shall open, maintain or conduct any shop or other place for the sale of wine, beer or spirituous liquors, or sell the same at any place within a distance of three miles from the agricultural college and farm; provided that the same may be sold for sacramental, mechanical, medical or culinary purposes; and any person violating the provisions of this section shall be punished, on conviction by any court of competent jurisdiction, by a fine not exceeding fifty dollars for each offense, or by imprisonment in the county jail for a term not exceeding thirty days, or by both such fine and imprisonment.

SEC. 1621. (As amended by Chapter 27, Laws of 1884.) There shall be adopted and taught at the state agricultural college a broad, liberal and practical course of study in which the leading branches of learning shall relate to agriculture and the mechanic arts, and which shall also embrace such other branches of learning as will most practically and liberally educate the agricultural and industrial classes in the several pursuits and professions of life, including military tactics.

COUNTY HIGH SCHOOLS.

SECTION 1697. Each county having a population of two thousand inhabitants or over, as shown by the last state or federal census, may establish a high school on the conditions and in the manner hereinafter prescribed, for the purpose of affording better educational facilities for pupils more advanced than those attending district schools, and for persons desiring to fit themselves for the vocation of teaching.

SEC. 1698. When one-third of the electors of a county, as shown by the returns of the last preceding election, shall petition the board of supervisors requesting that a county high school be established in their

SEC. 1621. For catalogue and other information, address the president, at Ames.

county at the place in said petition named, then, or when said board in its discretion shall deem proper, said board shall give twenty days' notice previous to the next general election, or previous to a special election duly called for that purpose, that they will submit the question to the electors of said county whether such high school shall be established; at which election said electors shall vote by ballot, for or against establishing such county high school. The notice contemplated in this section shall be given through one or more newspapers published in said county, if any be published therein, and by at least one written or printed notice to be posted in each township.

SEC. 1699. After said election, the ballots on said question shall be canvassed in the same manner as in the election for county officers; and if a majority of all the votes cast on said question shall be in favor of establishing said school, the board of supervisors shall immediately proceed to appoint six persons, who shall be residents of the county, but not more than two of whom shall be residents of the same township, who shall, with the county superintendent of common schools, constitute a board of trustees for said high school. Each of said trustees appointed as aforesaid shall hold his office until his successor is elected and qualified, and shall be required, within ten days after appointment, to qualify by taking the oath of office, and giving such bond as may be required by the said board of supervisors for the faithful discharge of his duties.

SEC. 1700. At the next general election after said appointment, there shall be elected in said county six high school trustees, who shall be divided into three classes of two each; each class to hold their office one, two, and three years, respectively, and their respective terms to be decided by lot. And each year thereafter there shall be two such trustees elected to succeed those whose term is about to expire. And said trustees shall qualify and enter upon the duties of their office in the same manner and at the same time as other county officers.

SEC. 1701. The county superintendent shall, by virtue of his office, be president of said board of trustees, and at the first meeting in each year they shall appoint from their own number a secretary and treasurer, who shall perform the usual duties devolving upon such officers for the term of one year, or until their successors are appointed to take their places.

SEC. 1702. At said meeting, or at some succeeding meeting called for such purpose, said trustees shall make an estimate of the amount of funds needed for building purposes, for payment of teachers' wages, and for contingent expenses, and they shall present to the board of supervisors a certified estimate of the rate of tax required to raise the amount desired for such purposes. But in no case shall the tax for such purposes exceed in one year the amount of five mills on the dollar on the taxable

property of the county, and, when the tax is levied for the payment of teachers' wages and contingent expenses only, shall not exceed two mills on the dollar.

SEC. 1703. The said tax shall be levied and collected in the same manner as other county taxes, and when collected the county treasurer shall pay the same to the treasurer of the county high school, in the same manner that school funds are paid to the district treasurers as required by law.

SEC. 1704. The said treasurer of the high school shall give such additional bond as the board of trustees may deem sufficient, and receive all moneys from the county treasurer, and from other parties, that belong to the funds of said school, and pay the same out only by direction of the board of trustees, upon orders duly executed by the president, countersigned by the secretary thereof, stating the purpose for which they were drawn. Both the secretary and treasurer shall keep an accurate account of all moneys received and expended for said school; and at the close of each year, and as much oftener as required by the board, they shall make a full statement of the financial affairs of the school.

SEC. 1705. The said board of trustees shall proceed as soon as practicable after their appointment as aforesaid, to select the best site, in accordance with the vote of the county, that can be obtained without expense to the same, and the title thereof shall be vested in said county. They shall then proceed to make such purchases of material, and to let such contracts for their necessary school buildings, as they may deem proper, but shall not make any purchase or contract in any year to exceed the amount on hand, and to be raised by the levy of tax that year.

SEC. 1706. When said board of trustees shall have furnished a suitable building for the school, they shall employ some competent teacher to take charge of the same, and furnish such assistant teachers as they deem necessary, and provide for the payment of their salaries. As far as practicable model schools shall be encouraged; and advanced students, and those preparing to become teachers, may be employed a portion of their time in teaching the younger pupils, in order that they may become familiar with the practice as well as theory of successful school teaching, and also avoid, as far as practicable, the expense of employing other assistant teachers.

SEC. 1707. Tuition shall be free to all pupils of such school residing in the county where the same is located. The board of trustees, however, shall make such general rules and regulations as they deem proper in regard to age and grade of attainments essential to entitle pupils to admission in the school. If there should be more applicants than can be accommodated at any time, each district shall be entitled to send its equal proportion of pupils, according to the number of pupils it may have, as

shown by the last report to the county superintendent of common schools. And the boards of the respective school districts shall designate such pupils as may attend.

SEC. 1708. If, at any time, the school can accommodate more pupils than apply for admission from that county, the vacancies may be filled by applicants from other counties, upon the payment of such tuition as the board of trustees may prescribe; but at no time shall such pupils continue in said school to the exclusion of pupils belonging in the county in which such high school is situated.

SEC. 1709. The principal of any such high school, with the approval of the board of trustees, shall make such rules and regulations as he deems proper in regard to the studies, conduct and government of the pupils under his charge, and if any such pupils will not conform to and obey the rules of the school they may be suspended or expelled therefrom by the board of trustees.

SEC. 1710. The said board of trustees shall annually make a report to the board of supervisors of their county, which shall specify the number of students, both male and female, who have been in attendance at the county high school during the year, the branches of learning taught, the text-books used, the number of teachers employed, the amount of salary paid to them, the amount expended for library and apparatus, and for buildings and all other expenses; also, the amount of funds on hand, debts unpaid, and other information deemed important or expedient to report. Said report shall be printed in at least one newspaper in the county, if any is published therein, and a copy of the report shall be forwarded to the state superintendent of public instruction.

SEC. 1711. The board of supervisors shall have power to fill any vacancy that may occur in the board of trustees of that county, by appointment, until the next general election, and a majority of such board of trustees shall be a quorum for the transaction of business.

SEC. 1712. The board of supervisors may allow each member of the board of trustees the sum of two dollars per day for the time actually employed in the discharge of his official duties, and when such accounts are presented for payment they shall be audited and paid out of the county treasury, in the same manner as other accounts against the county, and said trustees shall not be entitled to any further remuneration for services or expenses.

SCHOOL DISTRICTS.

SECTION 1713. Each civil township now or hereafter organized, and each independent school district organized as such prior to the taking effect of this code, is hereby declared a school district for all the purposes of this chapter, subject to the provisions hereinafter made.

SEC. 1714. When an organized district has been left without officers, the township trustees shall give such notice for a special election of directors as is required in cases of regular district elections; and the persons elected shall continue in office until their successors are duly elected and qualified.

SEC. 1713. The design of the law is that civil and district township boundaries shall coincide. 41 Iowa, 30. When new civil townships are formed, the corresponding changes in district township boundaries take effect at the next subdistrict election. Sections 1715 and 1796.

SEC. 1714. 1. In case the board is reduced below a quorum, by resignation or otherwise, the township trustees call a special election to fill the vacancies.

2. In independent districts five notices shall be posted, as provided in sections 1742 and 1801; in district townships three notices are required in each subdistrict, as provided in section 1718. Note (*b*) to form 2.

3. The ballots in this election, in independent districts and in subdistricts of less than three in a district township, should indicate in whose place the person voted for shall serve.

SEC. 1715. 1. New district townships are not organized until the first Monday in March after the election of officers of the civil townships.

2. The boundaries of subdistricts lying wholly within the old or new districts, are not affected by the division of civil townships.

3. When subdistricts are divided by changes in civil township boundaries, the boards should incorporate the several parts with other subdistricts, or otherwise provide for such territory, so that all electors may vote at the following subdistrict election. In the absence of such action the territory properly belongs to the subdistrict which it adjoins, and the electors are entitled to vote therein.

4. Five days before the time for the regular subdistrict election, notices should be posted in three public places in each subdistrict, in both the old and new townships, by the resident subdirector; where there is no subdirector, by the secretary. Form 2, and notes.

5. Assets include school-houses, sites, and all other property and moneys belonging to the district. Liabilities include all debts for which the district in its corporate capacity is liable. In determining the assets, school property should be estimated at its present cash value. Note 3 to section 1820.

6. It is presumed that the teachers' fund and contingent fund have been expended equitably. The division of assets will therefore relate to the school-house and other property, moneys in all funds on hand, and taxes uncollected.

7. Each fund should be divided in proportion to the last assessed value of the property, real and personal. Any portion of the teachers' fund, however, derived from the semi-annual apportionment, should be divided in proportion to the number of persons between the ages of five and twenty-one years, according to the last enumeration.

SEC. 1715. When changes in civil township boundaries are made, or any district shall be divided into two or more entire townships for civil purposes, the existing board of directors shall continue to act for both or all the new districts, or parts of districts, until the next regular district election thereafter, at which time the new district township shall organize by the election of directors. The respective boards of directors shall, immediately after such organization, make an equitable division of the then existing assets and liabilities between the old and new districts; and in case of a failure to agree, the matter may be decided by arbitrators, chosen by the parties in interest. A similar division shall be made in case of the formation or changes of boundaries of independent districts.

SEC. 1716. Every school district which is now, or may hereafter be organized, is hereby made a body corporate by the name of the "district township," or "independent district" (as the case may be), of ....., in the county of ....., and in that name may hold property, become a party to suits and contracts, and do other corporate acts.

DISTRICT TOWNSHIP MEETING.

SECTION 1717. (As amended by Chap. 51, Laws of 1882.) Each district township shall hold an annual meeting on the second Monday in

8. School-houses will usually become the property of the district in which they are situated. If their value exceeds the amount justly due that district, and there is not sufficient school-house fund on hand to equalize the division, the boards should fix the amount each district should receive or pay.

9. An equitable arrangement mutually satisfactory to the parties in interest will be in accordance with the intent of the law. Any agreement should be reduced to writing, and entered in the records of each district.

10. The districts, after the division, which do not receive their just proportion of school-house property, have a claim against those that do obtain more than their due share. The last named are indebted to the first in the difference. 36 Iowa, 216.

11. A simple and just method to dispose of unpaid and delinquent taxes, also of all funds in the hands of the county treasurer, is to direct the payment of these funds in such manner that taxes derived from any part of the territory shall be paid to the district to which such territory will then belong.

12. If money is received which belongs to another, the rule is a general one that the law implies a promise on the part of the receiver to pay it over. Based upon this promise an action may be maintained for its recovery. 11 Iowa, 506.

SEC. 1716. 1. In suits, contracts and conveyances, the corporate name should be strictly observed.

2. At their annual meeting, the electors of any independent district may vote by ballot to change the name of the district, and the board will be guided by this expression of the electors.

3. A subdistrict is not a corporation, and hence can neither hold property nor perform any corporate act. Note 4 to section 1725. S. L. Decisions, 40.

SEC. 1717. 1. District townships are authorized to hold only one meeting in each year, except as provided by section 1717½.

March, and the electors of the district, when legally assembled at such meeting, shall have the following powers:

1. To appoint a chairman and secretary in the absence of the regular officers;

2. To direct the sale or other disposition to be made of any school-house, or the site thereof, and of such other property, personal and real, as may belong to the district; to direct the manner in which the proceeds arising therefrom shall be applied; to determine what additional branches shall be taught in the schools of the district; or to delegate any of these powers to the board of directors; and to authorize the board of directors to obtain at the expense of the district township, such highways as such board may deem necessary for proper access to the school-house in their districts;

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2. The meeting cannot be adjourned to another day, and must be held at the time and in the manner directed by the law. Section 1789.

3. Ten days' previous notice of this meeting should be given by the district township secretary, but as the law fixes the day of the meeting of the electors of the district township, and also of the subdistrict, a failure to give full notice, or any notice at all, though a violation of law, will not invalidate the proceedings of the meeting, if one is held at the usual time and place. 10 Iowa, 212.

4. The president and secretary are the regular officers of this meeting, and should act as such if present. Sections 1739 and 1741.

5. The electors have only such powers as are conferred by the statute, either expressly or by reasonable implication.

6. School-houses cannot be sold without a previous vote of the electors, but their action in voting a tax for the erection of a new school-house on the old site gives the board authority to remove or dispose of the old house.

7. The electors have no authority to instruct the board to loan money belonging to the district, nor to order money invested in government bonds.

8. If the electors direct that any additional branches shall be taught in one or all of the schools in the district township, their action is mandatory, and the board is bound to endeavor in good faith to fulfill the wishes of the electors.

9. The electors may not limit or restrict the board to the adoption of a course of study including only such branches as the electors may name. Nor may the electors direct that a particular branch, or certain studies, shall not be taught. It is the province of the board to decide what branches besides those in a teacher's examination and those named by the electors, shall be included in the course of study and taught in the schools of the district.

10. All school-house taxes must be voted by the electors of the district township, or of the subdistrict, this power cannot be delegated to the board.

11. The specific sum of money deemed necessary, and not a certain number of mills on the dollar, should be voted, except when a district lies in two counties. Chap. 67, Laws of 1874. The per centum necessary to raise this sum is determined by the board of supervisors. Sections 1777 and 1780.

12. The electors may not vote, nor the board appropriate, money to purchase text-books for the use of scholars or teachers.

13. Money may be paid for the purchase of a district library only when it has been voted for that purpose by the electors.

3. To vote such tax, not exceeding ten mills on the dollar in any one year, on the taxable property of the district township, as the meeting shall deem sufficient for the purchase of grounds and the construction of the necessary school-houses, for the use of the district, and for the payment of any debts contracted for the erection of school-houses, and for procuring district libraries, and for obtaining highways for access to school-houses;

4. To instruct the board of directors to transfer any surplus in the school-house fund, not appropriated, to either the contingent or teachers' fund.

SEC. 1717½. (Chap. 84, Laws of 1880.) When a school district, by fire or otherwise, has been deprived of a school building, and the board of directors of such district by use of the powers in them vested, are unable to provide for the continuance of the school therein; then such board of directors shall call a meeting of such district.

The manner of calling such meeting, and the powers of such meeting, shall be as follows:

1. The board of directors shall cause to be posted in three public places in such district, at least ten days prior to the designated time of holding such meeting, written notices of such meeting, in which shall be stated the time and place of such meeting, and the object or purpose for which the same is called.

2. The powers of such meeting shall be the same as is prescribed in section 1717 hereof, except those powers which are set forth in paragraph 2, after the word "applied" in the fourth line thereof, and in paragraph 3, after the word "district" in the fifth line thereof.

SUBDISTRICT MEETING.

SECTION 1718. The several subdistricts shall, annually, on the first Monday in March, hold a meeting for the election of a subdirector, five

14. The only change of money from one fund to another possible under the law is the transfer of school-house funds to either of the other funds, by vote of the electors. Note 7 to section 1748 and note 2 to section 1785.

15. The vote of the electors upon any of the questions mentioned in this section, may be taken by ballot, or *viva voce*, as the meeting shall direct. But pains should be taken to have the more important matters presented to the meeting when the attendance is largest. Note 1 to section 1807.

16. As regards many of the matters over which they have control, the electors should act each year, if it is desired to make their action continuous.

17. Failing to carry out instructions from this meeting, the board may be compelled by mandamus to show reason why the vote of the electors has not been complied with. S. L. Decisions, 55.

SEC. 1718. 1. No district township or subdistrict meeting shall organize earlier that 9 a. m., nor adjourn before 12 m. Section 1789.

2. The meeting should not be called later than 6 p. m. The law contemplates at least three hours for the election. 37 Iowa, 131. Note 3 to section 1789.

days' notice of which meeting shall be given by the then resident subdirector, or, if there is none, by the district secretary, posting a written notice in three public places therein, and such notice shall state the hour of meeting.

SEC. 1719. (As amended by Chap. 7, Laws of 1880.) At the meeting of the subdistrict a chairman and secretary shall be appointed, who shall act as judges of the election, and give a certificate of election to the subdirector elect. When there is a tie vote between two persons for the office of subdirector, the secretary shall notify the secretary of the district township board of such tie vote, and shall notify said persons to appear at the regular meeting of the board on the third Monday in March to determine the tie vote by lot before one or more members of

3. Any election by the people must be held on the day designated, and officers must be elected by a single ballot.

4. The practice of taking an informal ballot for the purpose of placing persons in nomination for subdirector is not to be commended. Such nominations should be made outside the meeting, or at least before the meeting is organized.

5. If subdistrict boundaries are in controversy by way of appeal, the election for subdirectors should be made on the basis of the status of the subdistricts on the day of election. Note 4 to section 1830.

SEC. 1719. 1. The chairman and secretary are not required to qualify.

2. The election must be by ballot. Constitution, article 2, section 6.

3. The chairman is entitled to his vote as much as any other elector.

4. No minor, nonresident nor alien can take part in a meeting of electors. To be entitled to the right of suffrage a person must be a male citizen of the United States, twenty-one years of age, a resident of the state six months next preceding the election, and of the county sixty days. Constitution, article 2, section 1. 69 Iowa, 368 and 75 Iowa, 220.

5. No person shall be deemed ineligible, by reason of sex, to any school office.

6. A man about to assume any school office must have the qualifications of an elector, at the time of his election or appointment.

7. The selection of a subdirector should be a matter of great care. He may receive no compensation from the district, and should therefore be a person whose interest will lead him to be a frequent visitor of the school, and who will see that the school-house is provided with all that will add to the comfort of the teacher and scholars and promote the highest welfare of the school.

8. The person receiving the greatest number of votes is elected, even though he has not received a majority of all the votes cast.

9. This section clearly provides how a tie vote shall be decided. And if more than two persons have each an equal number of votes, the same provisions will apply.

10. The electors of a subdistrict may, at their regular meeting in March, determine what amount is required for the erection of a school-house in said subdistrict. A sum in the aggregate may be voted, and the subdirector must certify the same to the next district township meeting held thereafter. Section 1778. Form 5.

11. If the electors of the subdistrict do not wish to have a tax to build their house levied upon themselves, they should simply prefer a request for a sufficient amount to build a school-house in their subdistrict, not naming any fixed sum. Note (c) to form 3.

the board elected, and the certificate of election shall be given accordingly. Should either party fail to appear, or take part in the lot, the secretary shall draw for him.

SEC. 1720. In all district townships comprising but one subdistrict the board of directors shall consist of three subdirectors; and in all district townships comprising but two subdistricts it shall consist of one subdirector chosen from each subdistrict and one from the district township at large, who shall in both cases be elected in the manner provided by law for the election of one subdirector from each subdistrict. The judges of the respective subdistrict elections shall canvass the votes for subdirector chosen from the district township at large, and shall issue a certificate of election to the person elected.

BOARD OF DIRECTORS.

SECTION 1721. (As amended by Chap. 27, Laws of 1874.) The subdirectors of the several subdistricts shall constitute a board of directors for the district township, and shall enter upon their duties upon the day fixed for the regular meeting of the board in March, at which time they shall organize by electing from their own number a president, who shall simply be entitled to a vote as a member of the board; and from the

SEC. 1720. 1. The board of a district township can not consist of less than three members. If there are two subdistricts, the subdirector from the township at large should be voted for at both meetings, and to avoid confusion, tickets should specify; For subdirector, A. B.; For subdirector at large, C. D.

2. The failure or refusal of the proper officers to issue a certificate to a person duly elected, cannot operate to deprive such person of his rights. The certificate or commission is the best, but not the only evidence of an election, and if that be refused secondary evidence is admissible. McCrary on Elections, section 171. S. L. Decisions, 35.

SEC. 1721. 1. The right or title to hold office cannot be determined by an appeal to the county superintendent. The proper remedy for any person aggrieved by the action of the board relating thereto is a petition to the district court, under sections 3345-3352, Code. S. L. Decisions, 35 and 67.

2. There can be no doubt that school officers should not express an official opinion upon matters entirely outside of their jurisdiction. Upon these subjects it is therefore useless to expect county superintendents, or this department, to give any other than general information, such as is presumably already within the knowledge of those applying.

3. Directors continue in office only during the term for which they were elected, or if apppointed, only until the next school election. Note 1 to section 1808.

4. It is quite customary for the outgoing board to meet on the third Monday in March and complete all its work, and for the new board to organize immediately thereafter. The legality or propriety of such action has never be questioned.

5. A member or officer of the board must have the qualifications of an elector, if a male; but no person is ineligible to any school office, by reason of sex.

6. A president whose term as director has expired may take no further part in the board, even though a new president has not been chosen.

district township at large, at their regular meeting on the third Monday of September in each year, a secretary and a treasurer, unless there are at least five subdirectors in the district township, in which case they may be selected from the board; and said secretary and treasurer thus elected shall qualify and enter upon the duties of their respective offices within ten days following the date of their election. If selected from the district township at large they shall have no vote in the proceedings of the board.

SEC. 1722. (As amended by Chap. 176, Laws of 18°0.) The board of directors shall hold their regular meetings on the third Monday in March and September of each year; and may hold such special meetings as occasion may require, at the call of the president, or by request of a majority of the board; provided that the board of directors of a district township may hold their meetings at any place within the civil or district township in which such district township is situated.

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7. If the board fails to elect a president, a secretary, or a treasurer, upon the day fixed by law or at a meeting adjourned from that day to a day certain, then the incumbent may qualify anew and hold the office for another year. But in order that a president may thus hold over, his term as a member of the board must also continue. Note 6 to section 1802.

8. No person may hold two offices of the board at the same time.

9. The secretary and the treasurer have ten days in which to qualify.

10. A person cannot remain an officer or member of the board and reside in another district, even though in the same civil township.

11. All the officers of the board, in addition to the oath which they may have taken as members, must take the oath of office as prescribed by section 5, article 11, of the constitution.

12. When the treasurer is chosen from the board, his ceasing to be a member of the board in March does not terminate his relation as treasurer of the district until September following.

13. If the treasurer continues in office by reason of failure to elect a successor, his bond should be renewed and he should produce and account for the funds in his hands, and the statement of such settlement should be indorsed on his new bond. Note 7 to section 1747.

SEC. 1722. 1. Section 1738 provides that a majority of the board shall constitute a quorum.

2. Special meetings should be convened by a written call, signed either by the president or a majority of the members, and each member should be duly notified of the purpose of the meeting, as far as known.

3. Any duty imposed upon the board as a body must be performed at a regular or special meeting, and made a matter of record. 47 Iowa, 11.

4. The consent of the board to any particular measure, obtained of individual members when not in session, is not the act of the board, and is not binding upon the district. 67 Iowa, 164.

5. This section authorizes the board of a district township to hold meetings in an independent district within the same civil township.

SEC. 1723. They shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district, but before erecting any school-house they shall consult with the county superintendent as to the most approved plan of such building. And all school-houses erected or repaired at a cost exceeding three hundred dollars, shall be so erected or repaired by contract, and no such contract for labor or materials shall be let until proposals for the same shall have been invited by advertisement for four weeks in some newspaper published in the county where the work is to be done, if there be one published therein, if not, in the nearest newspaper in an adjoining county; and such contract shall be let to the lowest responsible bidder, and bonds with sufficient sureties for the faithful performance of the contract shall be required.

SEC. 1723. 1. It is the duty of the board to make contracts for the erection of school-houses, when the means have been provided by the electors. Forms 6, 7 and 8.

2. The board may anticipate the levy and collection of school-house taxes already voted, and issue orders to build as directed by the electors. 51 Iowa, 102.

3. No member has authority to make a contract in behalf of the district, except under specific instructions of the board.

4. If a subdirector is appointed a committee to contract, it should be with certain limitations, and the contract must be reported to the board for approval, as provided by section 1753. S. L. Decisions, 40.

5. If members or officers of the board intentionally violate law they become personally liable. Iowa Reports, 14, 510; 17, 155; 24, 337, and 38, 47.

6. If an agent makes a valid contract without authority, he is himself bound thereby. 37 Iowa, 314. S. L. Decisions, 45.

7. Boards should not involve the district in an indebtedness for the erection of school-houses, by contracts and the issue of orders to exceed the amount voted by the electors, or of available school-house funds.

8. District townships have no authority to issue bonds or other evidences of indebtedness for the purpose of borrowing money.

9. Unappropriated school-house funds may be disposed of by the electors, under section 1717, for improvements, such as fencing school-house sites, providing wells, etc., or the same may be transferred to either the teachers' or contingent fund, and the board, under section 1723, is required to carry out the vote of the electors. S. L. Decisions, 55.

10. Any unappropriated school-house fund in the district treasury may be used for the erection or repair of school-houses, at the discretion of the board, without action of the electors.

11. A lightning rod may be supplied as a part of a new house, and paid for from the school-house fund. 51 Iowa, 432.

12. Before making a contract great pains should be taken to obtain the best possible plan for the building. On this point the law requires consultation with the county superintendent.

13. Contracts for the erection or repair of school-houses, or for material for the same, exceeding $300, cannot be entered into until proposals have been published at least twenty-eight days. Repairs include furniture.

14. After the contract is executed, it should be changed with caution, or the sureties may be released. 50 Iowa, 98.

SEC. 1724. They shall fix the site for each school-house, taking into consideration the geographical position and convenience of the people of each portion of the subdistrict, and shall determine what number of schools shall be taught in each subdistrict, and for what additional time beyond the period required by law they shall be continued during each year.

15. Contracts made in violation of the terms of this section are illegal. Their fulfillment may be prevented by injunction.

16. The local board of health has undoubted right under chapter 151, section 16, laws of 1880, to condemn and close for use as a school-house a building believed by them to be unfit for such purpose.

17. The district may not form a partnership with any other party in the building of a school-house. This does not prevent the receiving of donations and granting privileges under notes 12 and 15 to section 1753.

18. District property is exempt from general taxation, from execution, from garnishment, and from mechanic's lien. Sections 707, 3018, 2976, and 54 Iowa, 81.

19. The legal obligations of the district are the same as those of any other land owner, with regard to fencing. Sometimes a district desires to maintain a different or better fence than can be required of the party joining. In such cases it is quite customary for districts to build the whole fence.

20. There is no provision of law for condemning land for a school road. If the land cannot be procured by contract, the road may be established in the same manner and by the proceedings provided for the establishment of highways, and when the damages have been assessed, the district may pay the same.

SEC. 1724. 1. The power to locate sites for school-houses is vested, originally, exclusively in the board. This authority should be exercised with great care, and without prejudice. S. L. Decisions, 70, 75, and 93.

2. The wishes of the people, for whom the house is designed, should be consulted as far as practicable, taking into account the prospective as well as the present convenience of the subdistrict. S. L. Decisions, 55 and 64.

3. The power of the board to fix the site carries with it the power to relocate that site. The exercise of this power is a proper and necessary adjunct of the power to make alterations in subdistrict boundaries. 68 Iowa, 161.

4. An extension of settlements frequently changes the centers of population and necessitates a change of subdistrict boundaries, and the removal of school-houses to central localities in the new subdistricts. 23 Iowa, 408.

5. A site near the center of the subdistrict should be chosen, unless controlling circumstances indicate a different selection. S. L. Decisions, 39 and 95.

6. The removal of a school-house from the subdistrict must be first ordered by the electors, at the district township meeting. S. L. Decisions, 43.

7. As a change of boundaries between subdistricts does not take effect until the subdistrict meeting in March, the board may not move the school-house to accommodate the proposed new subdistrict until after that time.

8. If possible, the district should own the sites. In every case, a perfect title should be secured, and the warranty deed recorded, before commencing to build.

9. The site should contain not less than one acre of ground, ordinarily, and this exclusive of highway.

10. The provisions of section 1825 do not apply in cases where the site is purchased. S. L. Decisions, 86 and 96.

SEC. 1725. (As amended by Chap. 109, Laws of 1876, and Chap. 124, Laws of 1886.) They shall determine where pupils may attend school, and for this purpose may divide their district into such subdistricts as may by them be deemed necessary; provided that no such subdistrict shall be created for the accommodation of less than fifteen pupils, but the board of directors shall have power to rent a room and employ a teacher for the accommodation of any ten scholars; provided further that nothing in this chapter contained shall be construed to prohibit the construction of as many school-houses, out of moneys derived from taxes levied previous to January 1, 1876, in any subdistrict where the subdistrict comprises the entire district towhship, as shall have been authorized and provided for at the annual meeting of the district township electors.

SEC. 1726. They may establish graded or union schools wherever they may be necessary, and may select a person who shall have the general

11. Every new site, taken by condemnation under section 1825, must be selected on some public highway, at least forty rods from any residence the owner whereof objects to its being placed nearer, and not in any orchard, garden, or public park; except in incorporated towns or cities. Section 1826.

12. Boards may rebuild on sites without consent of owners of residences within forty rods.

13. As regards the length of time during which schools are to be taught in each subdistrict, twenty-four weeks is the minimum. The maximum is unlimited, except as by section 1780, providing a limit to the amount of taxes for contingent and teachers' fund.

SEC. 1725. 1. All changes in subdistrict boundaries must be made in strict conformity with sections 1738 and 1796.

2. The words pupils and scholars, as used in this section, mean persons between the ages of five and twenty-one years.

3. All territory must be included within some school district, and all of a district township must be included in some subdistrict. Section 1713. S. L. Decisions, 80.

4. A subdistrict is not a corporate body and has no financial claims, nor can it be held liable for debts, except as a part of the district township. Note 3 to section 1716. S. L. Decisions, 40.

5. The board may discontinue or abolish a subdistrict by a readjustment of boundaries, taking effect in March following.

6. No change in boundaries may be made by the board which leaves any subdistrict with less than fifteen persons of school age.

7. In an organized subdistrict, even though there are not fifteen persons of school age, a school must be held, unless the board is excused by the county superintendent. Section 1727.

8. The board cannot provide an extra school for the accommodation of a less number than ten persons of school age. S. L. Decisions, 99.

9. There is nothing in law to prevent the erection of more than one schoolhouse in a subdistrict. 69 Iowa, 533. S. L. Decisions, 132.

SEC. 1726. 1. With their power to establish and maintain graded schools, all boards are invested with the authority to prescribe a course of study in the different branches to be taught.

supervision of the schools in their district, subject to the rules and regulations of the board.

SEC. 1727. In each subdistrict there shall be taught one or more schools for the instruction of youth between the ages of five and twenty-one years, for at least twenty-four weeks, of five school days each, in each year, unless the county superintendent shall be satisfied that there is good and sufficient cause for failure so to do. Any person who was in the military service of the United States during his minority shall be admitted into the schools of the subdistrict in which he may reside on the same terms on which youths between the ages of five and twenty-one are admitted.

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2. A graded school, open to the older and more advanced scholars from every subdistrict, may be advantageously established at some central point in the district township.

3. It is very desirable that boards, county superintendent, and teachers should work together in efforts to classify and harmonize the work to be done in the ungraded schools. Much may be accomplished by concert of action in carrying forward some uniform method of classification and instruction.

4. Boards may bind a corporation by contracts entered into after the election of their successors and before their qualification. 13 Iowa, 555.

5. Boards may not unnecessarily make contracts to extend beyond their term. 87 Ill., 255.

6. While instances may occur in which the interests of the district will be subserved by making contracts with teachers and others, which will not expire for months after a change of officers, courtesy as well as justice, dictates the impropriety of making contracts the execution of which will embarrass successors in office. Ordinarily the board should make contracts only for the year during which they serve.

SEC. 1727. 1. Unless the county superintendent finds it quite impracticable that a school should be held, and releases the board, it is required by law to provide a school in every subdistrict.

2. The board may establish more than one school in a subdistrict if necessary for the accommodation of the children, subject to the limitations contained in sections 1725 and 1780. 70 Iowa, 102.

3. Under section 1724, the board has power to provide for a longer period of school than twenty-four weeks. An additional school in a rented room continues during such time as the board may determine.

4. Inequalities in the requirements may demand that varying prices should be paid as wages for different schools. S. L. Decisions, 73.

5. When two school-houses are within the same district, or subdistrict, a school of three months in each, held at the same time, does not fulfill the requirements of the law that a school of at least twenty-four weeks shall be taught.

6. The school year for school purposes should be regarded as beginning on the third Monday in March, when a new board enters upon its duties. The year for the reports closes in September.

7. All the youth of the state from five to twenty-one years of age, irrespective of religion, race or nationality, are entitled to the same school facilities. While schools may be graded according to the proficiency of pupils, no discrimination, such for instance as requiring colored pupils to attend separate schools, can be enforced. 24 Iowa, 266.

SEC. 1728. The board of directors of any district township or independent district shall not order, or direct, or make any change in the school-books or series of text-books used in any school under their superintendence, direction, or control, more than once in every period of three years, except by a vote of the electors of the district township or independent district.

CHAPTER 24, LAWS OF 1890.

AUTHORIZING AND EMPOWERING THE BOARDS OF DIRECTORS OF SCHOOL DISTRICTS TO PURCHASE TEXT-BOOKS, AND ALLOWING THE ELECTORS OF DISTRICTS AND COUNTIES TO DECIDE THE QUESTION OF UNIFORMITY, AND TO PROVIDE MEANS AND AUTHORITY FOR PURCHASE OF SCHOOL BOOKS AND SUPPLIES.

SECTION 1. The board of directors of each and every district township and independent district in the state of Iowa is hereby authorized and empowered to adopt text-books for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to

8. Persons over twenty-one years of age are not entitled to the benefits of the public schools, except as provided in the latter part of this section. If, however, the school is not full, they and nonresidents may be admitted, in the discretion of the board, upon such terms as the board may prescribe. Section 1794.

9. Children under five years of age will be more injured by the confinement than benefited by the instruction. They cannot claim the advantages of the school, and should not be allowed to attend.

SEC. 1728. 1. The change of any text-book in the school under this section does not prevent the board from changing any or all other books at a subsequent time.

2. Neither subdirector nor teacher has authority to change text-books.

3. The electors may not vote, nor the board appropriate, money for the purchase of text-books for the free use of scholars or teachers.

CHAPTER 24, LAWS OF 1890.

SECTION 1. 1. It is evidently not the intention to impose a hardship upon the president, but simply to guard the district against possible loss. The board is not to be considered as released in the slighest degree from its obligation, under the general law, to protect the funds. The bond is required for additional protection. Nor will the fact that the president gives a bond, in any way release the treasurer from his absolute responsibility for all funds of the district coming into his hands, from whatever source. Form 9.

2. While the president is held responsible under his bond for the books and moneys while in his hands, it is not to be presumed that he must of necessity personally handle and retail the articles sold. In many cases it will be desirable to engage some one to undertake for him the work of making changes of books, and of keeping the needed school supplies for sale.

3. There is no provision of law by which the board may relieve the president of his duty to become responsible for the care and handling of the books. The

the pupils of their respective districts at cost, and said money so received shall be returned to the contingent fund; that the books and supplies which are purchased under the provisions of this section shall be under the charge of the president of each board of directors, that he shall care therefor and receive all moneys for books sold, and he shall be responsible for all such books and moneys, and he shall give a bond in the sum of five hundred dollars with sureties to be approved by the county board of supervisors to insure the faithful performance of such duties.

SEC. 2. All the books and other supplies, purchased under the provisions of this act, shall be paid for out of the contingent fund, and the board of directors shall annually certify to the board of supervisors the additional amount necessary to levy for the contingent fund of said district to pay for such books and supplies. But such additional amount shall not exceed in any one year the sum of one dollar for each pupil residing in the district township or independent school district, and the amount so levied shall be paid out on warrants drawn for the payment of books and supplies only, but the district shall contract no debt for that purpose.

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board may not place them in charge of a local dealer, or of any other person but the president.

4. The president may not receive pay for any services required of him by the law. Nor has the board power to pay a commission or other amount to a dealer, or to any other person, for keeping, selling, or caring for the books and supplies.

5. We think the words *any and all other necessary school supplies* are intended to include only such articles as it is customary for parents to purchase for the use of their children in school work. For instance, globes and charts have not been furnished by the children. They cannot be bought with the money of the district, resold, and the money returned to the contingent fund as directed by the law.

6. Text-books of every variety, in all classes and grades, and all kinds of supplies usually purchased by the children for use in the schools for the purposes of instruction, may be purchased under this act.

7. It is desirable that the cost to the pupil shall be the lowest possible. Any extra expense connected with securing the books should not be added to their purchase price, but should be paid out of the contingent fund, upon separate orders. In this way the cost to the purchaser will agree with the contract price, and uniformity in cost for the same book will be common in many districts and counties.

SEC. 2. 1. Any contingent fund on hand may be used to purchase books and supplies. As the proceeds from sales must be returned at once to the contingent fund, no large additional amount will ordinarily be needed to enable the average district to secure books and supplies under this law.

2. When the board is estimating the levy for the contingent fund, it may include in the estimate an amount needed to pay any necessary expense connected with securing the books. But as indicated in section 1, and notes, no one can be paid for handling the books.

3. All payments under this chapter must be made in strict accordance with the other provisions of law governing the disbursement of school moneys. No order for any purpose may be drawn until the account has been regularly audited by the board.

SEC. 3. In the purchasing of text-books it shall be the duty of the board of directors or the county board of education to take into consideration the books then in use in the respective districts, and they may buy such additional number of said books as may from time to time become necessary to supply their schools, and they may arrange on equitable terms for exchange of books in use for new books adopted.

SEC. 4. If at any time the publishers of such books as shall have been adopted by any board of directors or county board of education, shall neglect or refuse to furnish such books when ordered by said board in accordance with the provisions of this act, at the very lowest price, either contract or wholesale, that such books are furnished any other district or state board, or were furnished to any other district or state board, in the year 1889, then said board of directors or county board of education may, and it is hereby made their duty to bring suit upon the bond given them by the contracting publisher.

SEC. 5. Before purchasing text-books, under the provisions of this act, it shall be the duty of the board of directors, or county board of education, to advertise, by publishing a notice for three consecutive weeks in one or more newspapers published in the county; said notice shall state the time up to which all bids will be received, the classes and grades for which text-books and other necessary supplies are to be bought, and the approximate quantity needed; and said board shall award the contract for said text-books and supplies to any responsible bidder or bidders offering suitable text-books and supplies, at the lowest prices, taking into consideration the quality of material used, illustrations, binding and all other things that go to make up a desirable text-book; and may to the end that they may be fully advised, consult the county superintendent; or, in case of city independent districts, with city superintendent or other competent persons, with reference to the selection of text-books, provided, that the board may reject any and all bids, or any part thereof, and re-advertise therefor as above provided.

SEC. 6. It shall be unlawful for any board of directors, or county board of education, except as provided in section 4, to displace or change

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SEC. 3. 1. There has never been in this state, nor is there at present, any authority of law for the furnishing of free text-books.

2. The provision allowing books in use to be exchanged on equitable terms for the new books adopted, will assist very materially in securing uniform books, as well as in reducing the expense to the people.

3. The good of the schools would be best advanced if it were ordered that the same book or books in any branch must be used in all the schools of the same grade in the district. This will simplify the purchase, and also facilitate the introduction of uniform books.

SEC. 5. Since the period of adoption is an extended one, it is essential that the best books obtainable be chosen. The knowledge and experience of the county superintendent render him peculiarly qualified to advise the board as to its choice.

any text-book that has been regularly adopted and introduced under the provisions of this act, before the expiration of five years from the date of such adoption, unless authorized to do so by a majority of the electors present and voting at their regular annual meeting in March, due notice of said proposition to change or displace said text-books having been included in the notice for the said regular meeting.

SEC. 7. Any person or firm desiring to furnish books or supplies under this act, in any county, shall, at or before the time of filing his bid hereunder, deposit in the office of the county auditor samples of all text-books included in his bid, accompanied with lists giving the lowest wholesale and contract price for the same. And said samples and lists shall remain in the county auditor's office, and shall be delivered by him to his successor in office; and shall be kept by him in such safe and convenient manner as to be open at all times to the inspection of such school officers, school patrons, and school teachers as may desire to examine the same, and compare them with others, for the purpose of use in the public schools. The board of directors and county board of education mentioned shall require of any person or persons with whom they contract for furnishing any books or supplies to enter into a good and sufficient bond in such sum and with such conditions and sureties as may be required by such board of directors or county board of education for the faithful performance of any such contract.

SEC. 8. When a petition shall have been signed by one-half the school directors in any county, and the same shall have been filed in the office of the county superintendent of said county, at least thirty days before the annual school elections in March, asking for a uniform series of text-books in the county, then the said county superintendent shall notify the county auditor and the board of supervisors of such petition. Such notice shall be in writing and shall be served or delivered as soon as possible, and within fifteen days after the filing of the petitions provided for herein, the board of education, provided for in section 9, shall meet and provide for the submission of the question of county uniformity.

SEC. 9. The county superintendent, the county auditor, and the county board of supervisors shall constitute a board of education, whose duty it shall be to arrange for a vote by the electors at the annual meeting in March, for or against county uniformity of school text-books

SEC. 8. It is intended that at least one-half of the individuals composing all boards, except those of city and town districts, shall sign the petition referred to. Form 12.

SEC. 9. 1. The county board of education is a continuous body.

2. County boards of education will from time to time make such rules and regulations as seem to them necessary to carry out the purpose and spirit of the law.

3. Purchases of records, dictionaries, apparatus, and similar supplies for the use of the district may not be made by contract under this law, but such articles

under such rules and regulations as said board of education may determine. Should a majority of the electors voting at such election, favor a uniform series of text-books for use in said county, then the county board of education shall meet and select the school text-books for the entire county, and contract for the same under such rules and regulations as the said board of education may adopt. When a list has been so selected, they shall be used by all the public schools of said districts, and the board of education may arrange for such depositories as they may deem best, and may pay for said school books out of the county funds and sell them to the school districts at the same price as provided for in section one of this act, and the money received from said sales shall be returned to the county funds by said board of education monthly. The boards of school officers, who are made the judges of the school meetings, shall certify to the board of supervisors the full returns of the votes cast at said meetings the next day after the holding of said meetings, who shall, at their next regular meeting, proceed to canvass said votes and declare the result.

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will be bought for cash as heretofore, with unappropriated contingent fund in the treasury, as provided by section 1729.

4. The county board of education must cause the books to be sold to the people direct, under such regulations as the board may adopt.

5. Security by bond made payable to the county, may be required from depositaries. But the fact that the money from sales must be returned to the county funds monthly, will lessen the need for as much security as would be necessary, if a large sum of money could be held by a depositary for a long time.

6. Under county uniformity, of course no bond is required from presidents, as the boards of the different districts have nothing whatever to do with the handling of the books and supplies.

7. The county board of education should arrange for a sufficient number of depositories to accommodate fully the people of every district in the county.

8. The law does not require bonds from depositaries.

9. It would promote an equality of price for the same book in the several counties, if any slight extra expense connected with securing or handling the books were not added to the contract price, but paid for from the county funds, by the board of supervisors. In this way, the books and supplies may be sold to the people at cost, the same as provided under sections 1 and 2, when purchase is made by a district.

10. The *judges of the school meetings* are, in district townships, those referred to in subsection 1 of section 1717, and in independent districts, those named in section 1808.

11. It is apparent that there will be many questions arising in the application of this act, upon which we cannot venture an opinion. Any matter in which the binding force or validity of a contract is involved, can be determined only by the courts of law.

12. The county attorney is the legal adviser of the county board of education, and he should be freely consulted on questions upon which the board may be in doubt.

SEC. 10. The county superintendent shall, in all cases, be chairman of the county board of education, and the county auditor shall be the secretary, and a full and complete record shall be kept of their proceedings in a book kept for that purpose, in the office of the county superintendent. A list of text-books so selected, with their contract prices, shall be reported to the state superintendent with the regular annual report of the county superintendent.

SEC. 11. It shall be unlawful for any school director, teacher or member of the county board of education to act as agent for any school text-books or school supplies during such term of office or employment, and any school director, officer, teacher or member of the county board of education who shall act as agent or dealer in school text-books or school supplies, during the term of such office or employment, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof, be fined not less than ten dollars nor more than one hundred dollars, and pay the costs of prosecution.

SEC. 12. The provisions of sections 8, 9 and 10 of this act shall not apply to schools located within cities or towns, nor shall the electors of said cities or towns vote upon the question of county uniformity, but nothing herein shall be so construed as to prevent such schools in said cities and towns from adopting and buying the books adopted by the county board of education at the prices fixed by them, if by a vote of the electors they shall so decide.

SEC. 13. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 1729. They may use any unappropriated contingent fund in the treasury to purchase records, dictionaries, maps, charts, and apparatus

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SEC. 11. 1. We think the intention of this section is to prohibit any of the persons named from engaging in any business in connection with school text-books or supplies, by which his pecuniary interests might be brought in conflict with his official duties.

2. The fact that a person is subject to the penalties named, for violating the provisions of this section, will not operate to deprive him of his office or position.

SEC. 12. 1. All the provisions of this act, except sections 8, 9 and 10, apply to city and town independent districts, and such districts may purchase books and supplies in the same manner as other districts, as provided by sections 1 to 7, inclusive.

2. The provisions of sections 8, 9 and 10, apply to villages and towns in district townships and in rural independent districts, such towns being a part of and included in the school districts in which they are situated.

3. It is intended that all forms of districts except those included in sections 1800–1806, shall be subject to county uniformity, if such uniformity is ordered.

SEC. 1729. 1. The law does not contemplate any purchase of maps, charts, or other apparatus, that cannot be paid for with surplus contingent funds. 80 Iowa, 121.

for the use of the schools of their districts, but shall contract no debts for this purpose.

SEC. 1730. They shall appoint a temporary president and secretary in case of the absence of the regular officers, and shall fill any vacancy that may occur in the office of president, secretary, or treasurer, or in the board of directors.

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2. Purchases of records, dictionaries, apparatus, and similar supplies for the use of the district may not be made by contract under chapter 24, laws of 1890, but all such articles will be bought for cash with unappropriated contingent fund in the treasury.

3. For a board to buy charts or other apparatus with the intention of afterwards certifying contingent funds to pay for the same, is a clear violation of the law. Members and officers so violating law may become personally liable. 37 Iowa, 314 and 38 Iowa, 47.

4. The tendency of our courts to hold boards to the strict construction of the law has seemed to be needed in order to protect the people, in many cases, from the misrepresentations of agents for supplies, who willingly take orders for apparatus at their risk, but also at great annoyance to districts and often to the detriment of the schools. 67 Iowa, 164.

5. There can be no doubt that one of the purposes of the school is to teach patriotism to the children. The board may use contingent funds in the treasury, not needed to keep the schools in operation during the year, to purchase a flag to be used as apparatus in the school room, on the school building, or upon the school grounds.

6. A debt against the school-house fund may be contracted for any of the articles included in this section, if the electors at their annual meeting have directed what purchases shall be made. 28 Iowa, 332.

SEC. 1730. 1. A vacancy can be created by death, removal, resignation, failure to elect, or failure to qualify on or before the third Monday in March.

2. If a subdistrict is divided, so as to form a new one, the resident subdirector will continue to act as though no change had been made, until the following subdistrict election.

3. If a person without the requisite qualifications, is elected a member of the board and acts with the board, being a member *de facto*, his acts will be valid, but when his disqualification becomes known, the board should declare the place vacant and appoint his successor. 23 Iowa, 96.

4. A board may ratify or adopt such acts of officers *de facto* as the law would permit officers *de jure* to perform.

5. School directors may resign at any time. A verbal or a written resignation may be tendered to the board when in session, or a written resignation may be handed to some member to be presented at a subsequent meeting, for acceptance by the board.

6. No one can be compelled to serve as a member or officer of the board against his wishes.

7. When a director habitually or wilfully neglects the duties of his office, he may be compelled by mandamus to perform them. S. L. Decisions, 100, 128, and 137.

8. Boards have no authority to remove any member or officer of the board. Such removal may be made only by the courts as provided by sections 746-750, Code.

SEC. 1731. They shall require the secretary and treasurer to give bonds to the district in such penalty and with such security as they may deem necessary to secure the district against loss, conditioned for the faithful performance of their official duties. The bonds shall be filed with the president, and in case of a breach of the conditions thereof he shall bring suit thereon in the name of the district township or independent district.

SEC. 1732. They shall, from time to time, examine the accounts of the treasurer and make settlement with him; and shall present, at each regular meeting of the electors of the district township, a full statement of the receipts and expenditures of the district township, and such other information as may be deemed important.

SEC. 1733. They shall audit and allow all just claims against the district, and fix the compensation of the secretary and treasurer, and no

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9. In case the board is reduced below a quorum by resignation, or otherwise, the township trustees must call a special election to fill vacancies, as provided by section 1714.

SEC. 1731. 1. The law requires all official bonds to be secured by at least two sureties who are freeholders, and whose aggregate property is double the amount of the bond, the oath of office to be subscribed on the back of the bond, or attached thereto, and the sureties to make affidavit that they are worth the amount named in the bond. Section 249, 250, 675 and 679, Code. Form 14.

2. As the bonds of the secretary and treasurer must be approved by the board, no member should become surety for one of these officers.

3. Any officer whose duty it is to give bonds for the proper discharge of the duties of his office, and who neglects so to do, is guilty of a misdemeanor, and is liable to a fine. Sections 684 and 3965, Code.

4. A board approving bonds known to be insufficient, does not discharge the duty incumbent upon it, and is liable under section 3965, Code, on a charge of misdemeanor. Iowa Reports, 14, 510; 18, 153.

SEC. 1732. 1. The interest and protection of the taxpayers require that such settlement should be made at least twice a year, and more frequently if deemed necessary, and the settlement at the end of the term requires that the funds and property shall be produced and fully accounted for, and that these facts should be indorsed upon the new bond of the treasurer, if he is re-elected. Section 690, Code, quoted in note 7 to section 1747. 69 Iowa, 269.

2. Whenever the board thinks it necessary, security additional to that already given may be required of the treasurer. Section 773, Code.

3. This section contemplates that a full report of the affairs of the district shall be made by the board at each annual meeting of the electors. This work appropriately devolves upon the president, unless the board designates some other member. When practicable the report may be published in a newspaper.

SEC. 1733. 1. All demands, whether by contract or otherwise, must be approved by the board when in session, before an order may be drawn on the treasury, and no officer should draw an order unless he is authorized to do so by a vote of the board, at a regular or special meeting.

2. Only the secretary and the treasurer may receive compensation for the discharge of duties required by law. Section 1738 and 78 Iowa, 37.

order shall be drawn on the treasury until the claim for which it is drawn has been audited and allowed.

SEC. 1734. They shall visit the schools in their district, and aid the teachers in establishing and enforcing the rules for the government of the schools, and see that they keep a correct list of the pupils, embracing

3. It is the duty of the board to examine all contracts for the employment of teachers, and the construction of school-houses, or for any other purpose, and to see that the stipulations have been complied with, before directing the payment of money thereon.

4. A member may relieve himself of the responsibility of an illegal act of the board, by moving that the ayes and noes be taken, and voting no. In case of prosecution the liability of such member may be materially lessened.

5. The board may authorize the president and secretary to draw warrants for the payment of teachers' salaries at the end of each school month, upon proper evidence that the service has been performed, but the order for wages for the last month should not be drawn until the full report required by section 1760 is filed in the office of the secretary.

6. School orders issued without a vote of the board or otherwise illegally issued, although they may be signed by the president and countersigned by the secretary, are not binding upon the district. neither can they acquire validity by being transferred to third parties. If illegal when issued, they are illegal forever. 19 Iowa, 199 and 248. S. L. Decisions, 38.

7. An order is not a negotiable paper. It is subject to all equities and defenses to which it would have been subject in the hands of the payee. 22 Iowa, 595 and 29 Iowa, 339.

SEC. 1734. 1. Boards have entire control over the public schools of their district and the teachers employed therein.

2. Rules and regulations governing teachers and scholars, may be adopted and enforced by the board, as the best interests of the schools may seem to require. S. L. Decisions, 49 and 91.

3. The force and effect of any motion adopted by the board does not terminate with a change of officers or members, but remains in force until repealed. 35 Iowa, 361.

4. The teacher is the agent of the board, and rules made by him and enforced with either the formal or tacit consent of the board, are in effect the rules of the board.

5. If it is understood that the principal of a school has charge of other rooms besides his own, he has the same power in managing the children that is by law given to other teachers.

6. The board of every district should adopt a carefully prepared course of study, to which the electors may add other branches.

7. The law does not prescribe clearly the several branches that shall be taught in the public schools, further than to require the teachers to be qualified to teach certain branches enumerated. It is plainly implied that all those common branches are to be included in every course of study.

8. In the absence of instruction by the electors, the board should decide what branches in addition to those in a teacher's examination, shall be taught.

9. The board of every district has the right to include music, drawing, or any other branch, in the course of study.

the periods of time during which they have attended school, the branches taught, and such other matters as may be required by the county superintendent. In case a teacher employed in any of the schools of the district township is found to be incompetent, or is guilty of partiality or dereliction in the discharge of his duties, or for any other sufficient

10. It is the duty of the teacher, under the direction of the board, to determine what branches can best be pursued by each pupil.

11. Without special mention in the teacher's contract, it is understood that only the common branches and those included in the course of study for the school are expected to be taught.

12. If it is desired that higher arithmetic, or any other advanced study, shall be taught in one or more schools in the district, the board should include such branch in the course of study for such school or schools.

13. It is not within the province of individual persons to demand instruction outside the branches usually taught.

14. Every scholar must study physiology and hygiene, including the effects of stimulants and narcotics, until the outline upon that branch, as prepared by the board, has been completed.

15. It becomes the duty of every teacher to follow the plan of work indicated in the course of study. When difficulties are met, if no other person has general supervision, the matter may be brought to the attention of the board.

16. As regards classification, the board has absolute control. But as the teacher is by common consent presumed to know what will be best for all, custom has left to him the making of the program and the placing of scholars in the proper classes. In doing this, however, he acts for the board, and any complaint should not be made to the teacher, but to the board.

17. If a scholar is found to be so deficient in the common branches that he is unable to take the work in a class more advanced, without detriment to the class and to himself, it is plain that he may be classified in each branch where he is likely to receive the greatest good. The penalty for not pursuing a suitable course of study will be found in the fact that such scholars may be denied promotion, and may not be allowed to graduate.

18. In connection with the course of study, the board should designate the teaching helps and apparatus to be used, and should also arrange to furnish such appliances as soon as they are needed.

19. A conscientious compliance with the requirements regarding visitation would greatly increase the efficiency of the schools. There are very many things that may be best ascertained by visiting the school, inspecting the work of the pupils, and conversing with the teacher. The teacher can accomplish the best results only when he is sure of the hearty co-operation and support of the board.

20. It is the duty of every board to see that the teachers comply strictly with all requirements made by the county superintendent, as well as with all rules made by the board. S. L. Decisions, 135.

21. Every teacher in the county may be required to make such reports, agreeing with the spirit of the law, as the county superintendent may request, in such form and at such reasonable times as the county superintendent may determine.

22. The continued refusal to comply with all uniform and reasonable regulations made by the county superintendent, or by a board, on the part of any one employed as teacher, would constitute good cause for revocation or subsequent refusal of certificate, or for dismissal by the board.

cause shown, the board of directors may, after a full and fair investigation of the facts of the case, at a meeting convened for the purpose, at which the teacher shall be permitted to be present and make his defense, discharge him.

SEC. 1735. The majority of the board in independent districts shall have power, with the concurrence of the president of the board of

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23. By universal consent, and certainly by the spirit of our school law, it is expected of teachers that they refrain from improper language, keep the Sabbath day with respect, and in every other way avoid practices or company that are demoralizing in their tendencies.

24. Teachers are entitled to the support and co-operation of the board. It is alike due to the dignity of the board and the rights of the teacher that no one should be discharged except after thorough investigation and the clearest proof. If possible, the teacher should be shielded from the stigma of discharge.

25. In the trial of a teacher, when it is sought to dismiss him, all the provisions of section 1734 must be strictly complied with. The board must allow the teacher to make a full defense, and the teacher may appear by attorney, or otherwise, as he chooses.

26. Boards may dismiss teachers only for good cause shown. In case the board passes an order to dismiss, the material reason therefor should be spread upon the record, for, while in case of contest, these reasons would not be conclusive against the teacher, the board would be estopped from presenting other reasons than those named in the record.

27. When a teacher is unjustly dismissed, an appeal may be taken from the action of the board in dismissing him, but a suit at law must be brought, if he seeks to recover his pay upon the contract. The teacher should be paid only to the date of legal dismissal. 53 Iowa, 585.

SEC. 1735. 1. The board will be justified in refusing to permit the attendance of a pupil whose parent will not consent that he shall obey the rules of the school. 50 Iowa, 145.

2. The right to attend school is not absolute, but is conditional upon compliance with the rules and the essential conditions.

3. A board may not adopt a rule which will deprive a child of school privileges, except as a punishment for breach of discipline or an offense against good morals. 56 Iowa, 476.

4. It is competent for boards to provide by rules that pupils may be suspended from the schools in case they shall be absent or tardy a certain number of times within a fixed period, except for sickness or other unavoidable cause. 31 Iowa, 562.

5. The parent has no right to interfere with the order or progress of the school by detaining his child at home, or by sending him at times that prove an annoyance or hindrance to others. 31 Iowa, 562.

6. If the effects of acts done out of school hours reach within the school room during school hours, and are detrimental to good order and the best interests of the pupils, it is evident that such acts may be forbidden. 31 Iowa, 562.

7. We believe our courts will sustain boards in recognizing flagrant offenses having a direct and immediate tendency to injure the school, to bring contempt upon the teacher, or to subvert the authority of the board, even though such offenses may be committed away from the school grounds, and out of school hours. And if boards find it necessary in their opinion, to adopt and enforce reasonable regu-

directors, to dismiss or suspend any pupils from the school in their district for gross immorality or for a persistent violation of the regulations or rules of the school, and to readmit them if they deem proper so to do.

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lations in such cases, we believe their action will not be interfered with by the courts.

8. The regulations of the state board of health require every person entering any public school to give satisfactory evidence of protection by vaccination. Local boards of health have the power to require protection in all schools, and of all children, or even all persons within their jurisdiction. It is well established that schools are among the most prolific sources of the spread of contagious diseases.

9. The board should exclude children coming from houses where there are contagious diseases, and may also enforce a rule that children not vaccinated shall be excluded until they have complied with such reasonable regulation.

10. The law does not provide that the board is compelled to give scholar or parents notice or chance for defense, before ordering suspension or expulsion of the scholar. The board has large discretionary powers. This is one of the matters which come wholly within its discretion. But it would be well for the board carefully to investigate the charges, before dismissing any scholar. S. L. Decisions, 91.

11. For good cause, a teacher may suspend without fixing the time, notice being also at once given to the board.

12. Suspension is the separation of the scholar from the school for a limited time, and it may be either for bad conduct, for absence, or as a sanitary measure.

13. The period of time fixed by the board during which suspension or expulsion shall be in force, should be clearly indicated. Conditions upon which earlier readmission is provided for, may very properly be given in the same connection.

14. The true idea is to bring all within the salutary influence of the school, and to drive none out, but cases sometimes occur in which it becomes necessary for the board to protect the rights of the many by excluding a scholar whose presence and example are a constant menace to the successful progress of the school.

15. The teacher has control over scholars during school hours, unless restricted by a rule of the board. He may require a scholar to remain in his seat during recess as a punishment. However, it is not wise to deprive children, to any great extent, of the exercise necessary to their physical well-being.

16. A teacher may not detain a scholar after school hours, against the wish of the parent.

17. Teachers should exercise watchful care and oversight as regards the conduct and habits of their scholars, not only during school hours, recesses and intermissions, but also within reasonable limits while they are coming to and returning home from school.

18. The teacher is responsible for the discipline of his school, and for the progress and deportment of his scholars. It is his imperative duty to maintain good order and require of all a faithful performance of their duties. If he fails to do so he is unfit for his position. To enable him to discharge these duties effectually, he must necessarily have the power to enforce prompt obedience to his requests. For this reason the law gives him the power, in proper cases, to inflict punishment upon refractory scholars. S. L. Decisions, 49 and 71.

19. In applying correction, the teacher must exercise sound discretion and judgment, and should choose a kind of punishment adapted not only to the

SEC. 1736. They shall at their regular meeting in March of each year require the secretary to file with the county superintendent, county auditor and county treasurer, each, a certificate of the election, qualification and post office address of the president, treasurer, and secretary of the district township, and to advise them from time to time of any changes made in said offices by appointment.

SEC. 1737. They shall make such rules and regulations as may be necessary for the direction and restriction of subdirectors in the discharge of their official duties, and not inconsistent with law.

SEC. 1738. A majority of the board of directors shall be a quorum to transact business, but a less number may adjourn from time to time, and no tax shall be levied by the board after the third Monday in May; nor shall the boundaries of subdistricts be changed except by a vote of the

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offense, but to the offender. Corporal punishment is a severe remedy, and its use should be reserved for the baser faults. S. L. Decisions, 48.

20. In 50 Iowa, 145, the suggestion is made that expulsion by the board rather than severe corporal punishment by the teacher, is a good remedy in case of a repeated violation of the rules.

SEC. 1736. It is very important that the secretary should file the certificate with the county officers named, immediately after the regular meeting of the board in March and September, otherwise funds belonging to the district may be paid to persons not authorized to receive them. Whenever a change is made the county officers should be notified. Form 15.

SEC. 1737. These rules should be carefully prepared, adopted by the board and recorded, and each subdirector should be furnished with a copy. They may properly provide all restrictions, not in conflict with law, which the board may see fit to adopt for the guidance of subdirectors. They may direct that a subdirector may not teach his own school; that no contracts shall be made by him which do not expire with the school year; and that he may not engage as teacher a near relative or a connection unless he has obtained the previous consent of a majority of the board, nor employ any teacher to whom a majority of the electors or patrons object in writing. Section 1753, and notes.

SEC. 1738. 1. As to the proper course to pursue when the board is reduced below a quorum, see note 9 to section 1730.

2. In the absence of a direct provision of law, or of a by-law requiring a majority vote of all the board, or one providing that the highest vote shall carry, or a rule imposing some other limitation upon the board, a majority of the votes cast, a quorum being present, will carry a measure.

3. Our supreme court has held that the provision of this section that no tax shall be levied by the board after the third Monday in May, is mandatory, and that a tax voted after that time is void. 73 Iowa, 304. This decision renders it essential that boards act promptly, and see that all taxes are determined and certified within the time required by law. Section 1777.

4. A change of subdistrict boundaries is illegal and void, unless made by a majority of the whole board.

5. Any compensation paid to any other member of the board than the secretary and treasurer, for the performance of official duties, is in direct opposition to the law, and an open violation of the oath of office. For locating sites, or receiving buildings on the completion of contracts, a member clearly cannot receive pay.

majority of the board, nor shall the members of the board, except its secretary and treasurer, receive pay out of any school funds for services rendered under this chapter.

Chapter 64, Laws of 1874.

INDUSTRIAL EXPOSITIONS IN SCHOOLS.

Section 1. It shall be the duty of the board of directors of independent school districts, and the subdirector of each subdistrict, if they should deem it expedient, under the direction of the county superintendent, to introduce and maintain an industrial exposition in connection with each school under their control within this state.

Sec. 2. These expositions shall consist of useful articles made by the pupils, such as samples of sewing, and cooking of all kinds, knitting, crocheting, and drawing, iron- and wood-work of all kinds, from a plain box or horseshoe to a house or steam engine in miniature; also, all other useful articles known to the industrial world, or that may be invented by the pupils, in connection with farm and garden products in their season, that are the results of their own toil.

Sec. 3. The pupils shall be required to explain the use and method of their work, and kind and process of culture of farm and garden products.

Sec. 4. The parents and friends of pupils shall be allowed and requested to be present at said expositions.

Sec. 5. Ornamental work shall be encouraged when accompanied by something useful made by the same pupil.

Sec. 6. These expositions shall be held in the school room upon a school day as often as once a term, and not oftener than once a month.

Chapter 23, Laws of 1882.

REQUIRING BOARDS TO SET TREES ON SCHOOL GROUNDS.

Section 1. The board of directors of each district township and independent district, shall cause to be set out and properly protected, twelve

6. A member may not be employed by the board to oversee the building of a school-house and receive pay therefor, or to act in any like capacity for which he would be paid from the funds of the district. Such engagement is contrary to public policy and clearly illegal. 78 Iowa, 37.

7. The board may receive and act upon communications from persons selected outside the board to report upon matters referred to such persons as a committee.

8. An official trust cannot be delegated. Neither the board, nor any member may appoint a substitute to perform the official duties of a member or of the board.

9. A vote may be rescinded, if matters have not become involved making such reconsideration impossible, such as the acceptance of a contract under the vote in question, or the filing of an appeal.

or more shade-trees on each school-house site belonging to the district, where such number of trees are not now growing, and such expense shall be paid from the contingent fund.

SEC. 2. It shall be the duty of the county superintendent in visiting the several schools in his county, to call the attention of any board of directors neglecting to comply with the requirements of this statute, and the required number of shade-trees shall be planted as soon thereafter as the season will admit.

SEC. 3. That section 1745, of the Code, be amended by adding an additional item at the end of said section, as follows: 12. The number of trees set out and in thrifty condition on each school-house grounds.

CHAPTER 149, LAWS OF 1882.

(As amended by Chap. 107, Laws of 1886.)

ENABLING BOARDS TO INSURE SCHOOL PROPERTY.

SECTION 1. The board of directors of all school districts, organized under any of the laws of this state, may use unappropriated contingent funds for the purpose of effecting an insurance on the school property of their district; but they may contract no debts for this purpose.

CHAPTER 103, LAWS OF 1884.

PROHIBITING BARB WIRE AROUND SCHOOL-HOUSES.

SECTION 1. It is hereby made the duty of the board of directors of every independent district and of every district township, to remove before the first day of September, A. D. 1884, any barb wire fence enclosing in whole or part any public school grounds in such district, and it is also made the duty of any person owning or controlling any barbed wire fence within ten feet of any public school grounds to remove the same within the time herein above named.

SEC. 2. Hereafter barb wire shall not be used in enclosing in whole or in part any public school building or the grounds upon which the same may stand; and no barbed wire shall be used for a fence or other purpose within ten feet of any public school ground.

SEC. 3. For a failure or neglect on the part of any board of directors of any independent district, or of any district township to carry out the provisions of this act, any member of such board shall be fined, on conviction, not exceeding twenty-five dollars, any person violating the provisions of this act shall, on conviction thereof, be fined not exceeding twenty-five dollars.

Chapter 1, Laws of 1886.

TEACHING AND STUDY OF EFFECTS OF ALCOHOL AND STIMULANTS UPON THE HUMAN SYSTEM.

Section 1. Physiology and hygiene, which must in each division of the subject thereof include special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system, shall be included in the branches of study now and hereafter required to be regularly taught to and studied by all pupils in common schools and in all normal institutes, and normal and industrial schools, and the schools at the soldiers' orphans' home and home for indigent children.

Sec. 2. It shall be the duty of all boards of directors of schools and of boards of trustees, and of county superintendents in the case of normal institutes, to see to the observance of this statute and make provision therefor and it is especially enjoined on the county superintendent of each county that he include in his report to the superintendent of public instruction the manner and extent to which the requirements of

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CHAPTER 1, LAWS OF 1886.

Section 1. 1. The words *regularly taught* are construed to mean, as other branches are taught. They do not mean that a scholar must necessarily study this branch continuously during his entire school life, unless the course of study adopted by the board so provides.

2. This study must begin in the lowest primary class. In what grade or class it shall be completed is to be determined by the board.

3. Primary classes must be instructed orally, as the children are not old enough to use or comprehend a book. But this oral instruction must be outlined as a course, and adopted by each board.

4. The portion assigned to each grade or class should be thoroughly mastered before more advanced work is entered upon.

5. The work will be best accomplished with the older scholars by the use of a suitable text-book, which it is the duty of every board to select and adopt.

6. The board may forbid the use of tobacco on the school grounds.

7. Teachers should be careful to give instruction in accordance with the spirit of the law. The law contemplates that the effects upon the system of the user of alcoholic drinks, stimulants and narcotics, shall be taught. Many other harmful effects, very properly emphasized in public lectures, are not required to be taught in the class-room. It is not out of place to emphasize the truth that total abstinence is the only sure way to escape the evils arising from the use of alcoholic drinks and tobacco.

Sec. 2. 1. Boards cannot shift the responsibility by simply providing that teachers shall give instruction in this branch. They must see to it that the work is actually done by the teachers, as the law requires.

2. In normal institutes, efficient and earnest instructors should be employed. Charts and other appliances should be amply provided. Physicians and scientists may be invited to lecture, and teachers should be exhorted to be sincere, fearless, and faithful in the discharge of their duty.

section one of this act are complied with in the schools and institutes under his charge, and the secretary of school boards in cities and towns is especially charged with the duty of reporting to the superintendent of public instruction as to the observance of said section one hereof, in their respective town and city schools, and only such schools and educational institutions reporting compliance, as above required, shall receive the proportion of school funds or allowance of public money to which they would be otherwise entitled.

SEC. 3. The county superintendent shall not after the 1st day of July, 1887, issue a certificate to any person who has not passed a satisfactory examination in physiology and hygiene with especial reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system, and it shall be the duty of the county superintendent as provided by section 1771, to revoke the certificate of any teacher required by law to have a certificate of qualification from the county superintendent, if the said teacher shall fail or neglect to comply with section one of this act, and said teacher shall be disqualified for teaching in any public school for one year after such revocation, and shall not be permitted to teach without compliance.

PRESIDENT.

SECTION 1739. (As amended by Chap. 46, Laws of 1882.) The president shall preside at all meetings of the board of directors of independent districts and of the district townships, shall draw all drafts on the county treasury for money apportioned to his district, sign all orders on the treasury, specifying in each order the fund on which it is drawn and the

3. Every scholar must study physiology and hygiene, including the effects of stimulants and narcotics, until the outline upon that branch, as prepared by the board, has been completed.

4. Blanks will be furnished to school officers, from time to time, to enable them to make the reports required by this chapter.

SEC. 3. 1. To teach a special branch, a person may receive a certificate for that study only, and is not required also to be examined as herein provided for teachers in general.

2. County superintendents should know that every teacher is complying fully with this statute, and any teacher failing or refusing to teach as required, should not be permitted to continue in the work of teaching.

SEC. 1739. 1. The president of the board must take the oath of office according to article 11, section 5, of the constitution of Iowa.

2. There is no provision of law which gives any other member or officer of the board the power to administer the oath of office to the president elect.

3. The president has the right to vote on all questions coming before the board. If by such vote a tie is produced, the motion is lost. Sections 1721 and 1802.

4. An order on the district treasury may not be signed except by authority of the board. Sections 1733 and notes, and notes 4 and 5 to section 1743.

use for which the money is appropriated, and shall sign all contracts made by the board, and shall be empowered to administer the oath of office to the secretary, treasurer, and members of the board.

SEC. 1740. He shall appear in behalf of his district in all suits brought by or against the same, but when he is individually a party, this duty shall be performed by the secretary; and in all cases where suits may be instituted by or against any of the school officers to enforce any of the provisions herein contained, counsel may be employed by the board of directors.

SECRETARY.

SECTION 1741. The secretary shall record all the proceedings of the board and district meetings in separate books kept for that purpose; shall preserve copies of all reports made to the county superintendent; shall file all papers transmitted to him pertaining to the business of the district;

5. It is an advantage for the secretary to hold the order book, for by this means he can better keep his records, make the transcript to the treasurer of orders drawn, and more easily make his final report to the board in September.

6. The president may not act as secretary or treasurer of the board.

7. To be valid, an order must express upon its face the fund on which it is drawn, and name the purpose for which it was issued. 52 Iowa, 287.

8. An order of the board cannot be considered as officially transmitted, unless signed by the president, as well as by the secretary.

9. The failure of an officer to attach his official title to his signature, will not affect the instrument so far as the district is concerned, provided the writing was authorized, and made for the district, and this fact can be shown. Iowa Reports, 7, 509; 11, 82.

10. Unless the fact that official approval was authorized can be shown, personal liability may follow. 59 Iowa, 696.

11. The president may be compelled by mandamus to give his approval of a contract made in accordance with a vote of the board. 56 Iowa, 573.

12. In the absence of the president, or when he is unwilling to discharge the duties of his office, a temporary president may be appointed, who during the time he is acting as president, may sign orders and contracts and do all other acts proper to be done by the president, but is not authorized to act except when the board is in session.

SEC. 1740. 1. The expenses in suits provided for by this section should be paid from the contingent fund.

2. Appeals to the county superintendent or superintendent of public instruction, are not suits brought by or against the district, nor are they suits brought by or against any of the school officers, within the meaning of the law, and no charge can be made against the district for attorney fees. 36 Iowa, 411.

SEC. 1741. 1. It is essential that the record of the proceedings of the board and district meetings should be properly kept. Every transaction should be carefully noted, and the proceedings read and approved.

2. The minutes of a meeting, as recorded at the time by the secretary, must be regarded the best evidence as to the understanding the board had of a subject, at the time the question was voted upon. S. L. Decisions, 72 and 78.

shall countersign all drafts and orders drawn by the president, and shall keep a register of all orders drawn on the treasury, showing the number of the order, date, name of the person in whose favor drawn, the fund on which it is drawn, for what purpose and the amount; and shall, from time to time, furnish the treasurer with a transcript of the same.

SEC. 1742. He shall give ten days' previous notice of the district township meeting by posting a written notice in five conspicuous places therein, one of which shall be at or near the last place of meeting, and shall furnish a copy of the same to the teacher of each school in session, to be read in the presence of the pupils thereof, and such notice shall, in all cases, state the hour of meeting.

SEC. 1743. He shall keep an accurate account of all the expenses incurred by the district, and shall present the same to the board of directors, to be audited and paid as herein provided.

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3. The failure of the secretary to record all the proceedings of the board and of the district meetings in separate books, kept for that purpose, will not render the proceedings void. 8 Iowa, 298.

4. Public records are public property, and are open to inspection at proper times by any citizen. No public officer may refuse examination of the records; but as he is their custodian, and is charged with their safe-keeping, he must keep them in his possession.

5. Every officer having the custody of a public record or writing is bound to give any person, on demand, a certified copy thereof on payment of the legal fees therefor. Section 3706, Code.

6. The secretary is the custodian of the order book. He fills out the orders which the president afterward signs.

7. School orders should not be drawn payable on time, nor should any mention regarding interest be in the order.

8. The secretary may not act as president or treasurer of the board.

9. As the secretary is the clerical officer of the board, and cares for the records of the district, we think he should act as librarian unless the board selects some other person.

10. The registry of orders is an important matter. Every order drawn should be promptly reported to the district treasurer, as he has no other means of determining the amount of outstanding orders, and otherwise cannot comply with the law requiring him to make partial payments. Section 1748 and form 20.

SEC. 1742. The statutory mode of computing time excludes the day on which the notice is posted, and includes the day of meeting. Subdivision 23 of section 45, Code, also 61 Iowa, 303. Form 21.

SEC. 1743. 1. The secretary is also required by section 1782 to keep an account current with the district treasurer.

2. A large amount of labor devolves upon the secretary. The fidelity and promptness with which he attends to his duties make his assistance very valuable to the board and the district, and determine, in a large degree, the accuracy and completeness of his annual report to the board and to the county superintendent.

3. If a school officer habitually or wilfully neglects his duty, and the public good suffers by such negligence, a court may compel him to attend to the necessary duties of his office or to resign. 50 Iowa, 648.

SEC. 1744. He shall notify the county superintendent when each school of the district begins, and its length of term.

SEC. 1745. (As amended by Chap. 112, Laws of 1876, and Chap. 23, Laws of 1882.) Between the fifteenth and twentieth days of September, in each year, the secretary of each school district shall file with the county superintendent a report of the affairs of the district, which shall contain the following items:

1. The number of persons, male and female, each in his district, between the ages of five and twenty-one years;

2. The number of schools, and the branches taught;

3. The number of pupils, and the average attendance of the same in each school;

4. The number of teachers employed, and the average compensation paid per week, distinguishing males from females;

5. The length of school in days and the average cost of tuition per week for each pupil;

6. The text-books used, and the number of volumes in the district library, and the value of apparatus belonging to the district;

7. The number of school-houses, and their estimated value;

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4. The secretary, president, and treasurer must conform to the instructions of the board as far as those directions are in accordance with law, but they should not obey the board when ordered to do an illegal act.

5. If the board appropriates money to pay the members, other than the secretary and treasurer, or for any other illegal purpose, the president and secretary should decline to sign the order, and, if drawn, the treasurer should refuse to pay it.

SEC. 1744. The name of the teacher should be given, and any other information which will aid the county superintendent in planning his work of visitation, provided for in section 1774.

SEC. 1745. 1. The blanks for the annual report of the secretary are furnished by the state, through county superintendents. The secretary should copy the report required by this section, in the district records. If the original report is filed in his office, it is liable to be destroyed or mislaid, which may prove detrimental to the interests of the district. Form 22.

2. The law intends that no part of the enumeration shall be taken before the first day of September.

3. In independent districts, it is the duty of the secretary to take the annual school enumeration required by the first clause of this section, unless the board assigns the duty to another person. In any case proper extra compensation should be given for the work required, if the district is a large one.

4. In districts formed of parts of two or more counties, the secretary should make the annual report to the county superintendent of the county in which a majority of the children reside. This report should not include those children who reside in portions of the district lying in other counties. The remaining number of children should be reported by the secretary to the superintendents of their respective counties.

5. Every person between five and twenty-one should be enumerated where he resides. A child in one of the charitable or reformatory institutions temporarily,

8. The name, age, and post office address of each deaf and dumb, and each blind person within his district between the ages of five and twenty-one, including all who are deaf and dumb to such an extent as to be unable to obtain an education in the common schools; the number of trees set out and in thrifty condition on each school-house grounds.

SEC. 1746. Should the secretary fail to file his report, as above directed, he shall forfeit the sum of twenty-five dollars and shall make good all losses resulting from such failure, and suit shall be brought in both cases by the district on his official bond.

TREASURER.

SECTION 1747. The treasurer shall hold all moneys belonging to the district, and pay out the same on the order of the president, countersigned by the secretary, and shall keep a correct account of all expenses and receipts in a book provided for that purpose.

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and whose parents reside in another part of the state, or in another school district, is a resident of the district in which his parents reside, and should be enumerated there. If in the institution to remain permanently, having no parents or guardian, his residence is in the district in which the institution is located, and he should be enumerated therein.

SEC. 1746. In case a subdirector fails to make his annual report as required by section 1755, the secretary should at once collect the statistics necessary for a complete report. Boards should insist on promptness in sending this report, and then should give the secretary a suitable compensation for his labors. Section 1733.

SEC. 1747. 1. The language of this section is very explicit. It makes the treasurer the custodian of all moneys belonging to the district, which effectually precludes the idea of dividing the money belonging to any particular fund among the subdistricts. S. L. Decisions, 40.

2. The treasurer may pay out the funds only on the order of the president, countersigned by the secretary, and the president may not sign an order unless he is authorized to do so by the board. Section 1733, and notes to same, also section 1743, notes 4 and 5.

3. In making payment, one order may not be given precedence before another. 40 Iowa, 620.

4. Neither the electors nor the board may authorize the treasurer to loan money belonging to the district. Section 3908, quoted in note 8 below. Note 7 to section 1717.

5. The treasurer is responsible for all moneys coming into his hands by virtue of his office, even if stolen or destroyed by fire. The board has no authority to release him, unless he accounts in full for all moneys received by virtue of his office. Iowa Reports, 37, 550; 39, 9; 40, 130.

6. Having the consent of his bondsmen, the treasurer may deposit the money in some safe and secure bank. The treasurer and his bondsmen are as fully responsible as they would be if all the business was transacted by the treasurer in person.

7. When the incumbent of an office is re-elected, he shall qualify as above directed; but when the re-elected officer has had public funds or property in his

SEC. 1748. The money collected by district tax for the erection of school-houses and for the payment of debts contracted for the same, shall be called the school-house fund; that designed for rent, fuel, repairs, and all other contingent expenses necessary for keeping the schools in operation, the contingent fund; and that received for the payment of teachers, the teachers' fund; and the district treasurer shall keep with each fund a separate account, and shall pay no order which does

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control, under color of his office, his bond shall not be approved until he has produced and fully accounted for such funds and property to the proper person to whom he should account therefor; and the officer or board approving the bond shall indorse upon the bond, before its approval, the fact that the said officer has fully accounted for and produced all funds and property before that time under his control as such officer; and when it is ascertained that the incumbent holds over another term by reason of the nonelection of a successor, or for the neglect or refusal of the successor to qualify, he shall quality anew within a time to be fixed by the officer who approves of the bonds of such officers. Section 690, Code.

8. If any state, county, township, school or municipal officer, or officer of any state institution, or other public officer within the state, charged with the collection, safe-keeping, transfer, or disbursement of public money, fails or refuses to keep in any place of deposit that may be provided by law for keeping such money, until the same is withdrawn therefrom upon warrants issued by the proper officer, or deposits such money in any other place than in such safe, or unlawfully converts to his own use in any way whatever, or use by way of investment in any kind of property, or loan without the authority of law any portion of the public money entrusted to him for collection, safe-keeping, transfer, or disbursement, or converts to his own use any money that may come into his hands by virtue of his office, shall be guilty of embezzlement to the amount of so much of said money as is thus taken, converted, invested, used, loaned, or unaccounted for, and upon conviction thereof he shall be imprisoned in the penitentiary not exceeding five years, and fined in a sum equal to the amount of money embezzled, and, moreover, is forever after disqualified from holding any office under the laws or constitution of this state. Section 3908, Code.

SEC. 1748. 1. Minor improvements, such as the erection of ordinary out-houses, fences, and the like, may be paid for from either the contingent or school-house fund.

2. Ordinary repairs should be charged to the contingent fund; but when such repairs assume the magnitude of a rebuilding, or of an extensive addition, they should be charged to the school-house fund.

3. Any unappropriated school-house fund in the district treasury may be used for the erection or repair of school-houses, at the discretion of the board, without action of the electors.

4. The cost of seating new school-houses should be paid from the school-house fund. The law does not authorize the use of the contingent fund for the erection or completion of school-houses, but when a house needs reseating or other repairs, the cost may be defrayed either from the contingent fund, or from any unappropriated school-house fund in the treasury. 25 Iowa, 436.

5. The term, school furniture, as generally used in our state, means school desks, table, chairs and such similar articles as are closely related to making the school-house more suitable for its use as a school-house; school apparatus has been understood to include the articles mentioned in section 1729, or such similar articles

not specify the fund on which it is drawn, and the specific use to which it is applied. If he have not sufficient funds in his hands to pay in full the warrants drawn on the funds specified, he shall make a partial payment thereon, paying as near as may be an equal proportion of each warrant.

SEC. 1749. He shall receive all moneys apportioned to the district township by the county auditor, and also all money collected by the county treasurer on the district school tax levied for his district.

SEC. 1750. He shall register all orders on the district treasury reported to him by the secretary, showing the number of the order, date, name of the person in whose favor drawn, the fund on which it is drawn, for what purpose, and the amount.

SEC. 1751. (As amended by Chap. 112, Laws of 1876.) He shall render a statement of the finances of the district from time to time, as

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as would clearly come under the same designation for use in the schools for the purposes of instruction.

6. As the members of the board receive no pay for their services, if boards subscribe for a copy of any journal containing the official rulings and decisions of this department to aid them in their work, they have the right to pay for the same from the contingent fund.

7. Boards have no authority to transfer money from one fund to another, even temporarily, unless they are authorized under section 1717, subsection 4, to transfer school-house fund to either of the other funds. Notes to section 1785.

8. The teachers' fund should not be divided among the subdistricts, equally, according to the number of children, or upon any other basis. This fund can be paid out only to teachers for services performed, upon orders authorized by the board.

9. The board should grant a compensation to be paid the teacher according to the circumstances and requirements of each school. But the regular schools of the district should be kept in session an equal number of months.

10. Chapter 146, laws of 1882, as amended, confers upon all boards the right to insure property. This duty should not be neglected.

SEC. 1750. 1. It is essential that the treasurer should know the exact amount of outstanding orders, and for this reason the secretary is required to report to him all orders drawn on the district treasury. Section 1741, note 10, and form 20.

2. The register provided for in this section is indispensable to the treasurer, under the law requiring him to make partial payments on orders when he has not funds sufficient to pay them in full. Section 1748.

3. The treasurer may rightly object to paying an order that is defective in any of the particulars named. It is especially essential that the purpose for which the order was given shall be written in the order, and also on the stub in the order book.

SEC. 1751. 1. The blanks for the annual report of the treasurer are furnished by the state, through county superintendents. The report should be made according to form 24.

2. Treasurers should take pains to mail a copy of this report at once to the county superintendent, as only by timely attention on the part of treasurers, can the county superintendent compile and forward his annual report to the superin-

may be required by the board of directors, and his books shall always be open for inspection. He shall make to the board, on the third Monday in September, a full and complete annual report, embracing:

1. The amount of teachers' fund held over, received, paid out, and on hand.

2. The amount of contingent fund held over, received, paid out, and on hand.

3. The amount of school-house fund held over, received, paid out, and on hand.

He shall immediately file a copy of said report with the county superintendent, and for failure to file said report he shall forfeit the sum of twenty-five dollars, to be recovered by suit brought by the district, on his official bond.

SUBDIRECTOR.

Chapter 20, Laws of 1892.

TERM OF OFFICE.

Section 1. At the regular meeting of the board of directors of district townships in September, 1892, the board of directors shall specify what subdistricts, at the subdistrict election following in March, shall elect subdirectors for one year, two years, and three years, respectively, making the three classes as nearly equal as possible.

Sec. 2. After this election in March, all subdirectors shall be elected and hold office for a term of three years.

Sec. 3. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

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tendent of public instruction, on the first Tuesday in October. Sections 1772 and 1773.

3. Not even the electors of the district may release the treasurer and his bondsmen from their absolute liability for all funds. 59 Iowa, 50.

4. The sureties on an official bond cannot be held after the lapse of three years. Section 2529, Code.

5. In making settlement, the board may submit a difference with the treasurer, to arbitration. 70 Iowa, 65.

CHAPTER 20, LAWS OF 1892.

The requirements of this chapter are very plainly expressed. It is believed this change in the term of office of subdirectors may be made one of the most beneficial features of our school system. It now remains for the people to exercise their best judgment in the selection of those who are for a term of years to care for the interests and welfare of the district. In each subdistrict the wisest and most competent person should be elected subdirector, and if efficient, should be continued in office by re-election. Note 7 to section 1719.

SECTION 1752. (As amended by Chap. 19, Laws of 1892.) Each subdirector shall, on or before the third Monday in March following his election, appear before some officer qualified to administer oaths, and take an oath to support the constitution of the United States, and that of the state of Iowa, and that he will faithfully discharge the duties of his office, and in case of failure to qualify, or the district fails to elect, the board shall fill the office by appointment.

SEC. 1753. The subdirector, under such rules and restrictions as the board of directors may prescribe, shall negotiate and make in his subdistrict all necessary contracts for providing fuel for schools, employing teachers, repairing and furnishing school-houses, and for making all other provisions necessary for the convenience and prosperity of the schools within his subdistrict, and he shall have the control and manage-

SEC. 1752. 1. Any school director or director elect is authorized to administer to a school director elect the official oath required by law, but the secretary cannot administer this oath unless he is a member of the board, or is one of the many officers empowered by law to administer oaths.

2. A director elect may take the oath of qualification at any time between the day of election and the third Monday in March. 53 Iowa, 687.

3. In case a director elect fails to qualify by the close of the third Monday in March, it becomes the duty of the board as soon after that time as possible, to fill the vacancy by appointment.

4. If a person is elected as his own successor and fails to qualify on or before the third Monday in March, a vacancy exists which is filled by appointment.

5. A person appointed as a member of the board may be required to qualify within a time to be prescribed by the board. Section 786, Code.

6. All persons appointed to fill vacancies in office hold only until the next annual meeting of the electors. Constitution of Iowa, article 11, section 6; also section 785, Code.

SEC. 1753. 1. The subdirector is clothed with certain general powers by this section, but these are to be exercised under the direction of the board. The board may restrict him, for example, as to when he shall employ teachers, for how long a time, at what compensation, and even whom he shall not employ, the extent of repairs, and prices paid for same, and the amount and cost of fuel. 35 Iowa, 361 and 40 Iowa, 369. Note to section 1737. Form 25.

2. School officers are possessed of specially defined powers and should attempt to exercise no others, except such as arise by fair implication from those granted.

3. When a teacher or other person is about to enter into a contract with a subdirector, he knows that he is dealing with a public agent whose powers are subject to regulation and restriction by the board; he is bound to know what these rules and restrictions are and should be governed accordingly. 35 Iowa, 361.

4. The district township is bound by the contract of a subdirector, when made according to instructions by the board. 35 Iowa, 361.

5. The president may be compelled by mandamus to give his approval of a contract made in accordance with a vote of the board. Note 11 to section 1739.

6. The board should fix the wages to be paid in each subdistrict at such a figure as will enable each subdirector to secure a teacher qualified to govern and instruct his school. Note 4 to section 1727.

ment of the school-house unless otherwise ordered by a vote of the district township meeting. All contracts made in conformity with the provisions of this section shall be approved by the president and reported to the board of directors, and said board, in their corporate capacity, shall be responsible for the performance of the same on the part of the district township.

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7. It is the duty of our school authorities to provide for schools having non-English speaking scholars, the best instructors available, in order that all the children may acquire rapidly a correct use of English, and become acquainted, as soon as possible, with the spirit and genius of our American institutions.

8. The board may pass a resolution that teachers shall receive their pay monthly, upon the certificate of the subdirector, or of a committee of the board, that the required time has been taught. Note 11 to section 1757.

9. Each subdirector has exclusive control of the school-house in his subdistrict, unless the district township meeting has otherwise ordered.

10. Special powers delegated to the subdirector by the law, as for instance the control of the school-house in his own subdistrict, and the right to determine whether scholars may attend from or in an adjoining subdistrict, cannot be assumed by the board. Sections 1753 and 1795. Note 16 to section 1717.

11. The subdirector in district townships, or the board in independent districts, should require from parties desiring to use the school-house, security for its proper use and protection from other injury than natural wear.

12. It is proper to permit the use of school-houses for the purpose of public worship on Sunday, or for religious services, public lectures on moral or scientific subjects, or meetings on questions of public interest, on the evenings of the week, or at any time when such use will not interfere with the regular progress of the school. 35 Iowa, 194.

13. It is not in accordance with the meaning of the law and the decisions of the courts to allow a school-house to be used for a purpose requiring an admission fee. This does not prevent a contribution being taken, but we think free admission should not be denied.

14. It is believed that no discrimination should be made as to who may attend meetings held in a school-house. To make membership in a particular society a test for attendance upon the meeting would seem to be in conflict with the intention of the law.

15. The use of a public school building for Sabbath-schools, religious meetings, debating clubs, temperance meetings, and the like, is proper. Especially is this so where abundant provision is made for securing any damages which the taxpayer may suffer by reason of the use for the purposes named. The use of a school-house for such purposes, when so authorized, is not prohibited by section 3, article 1, of the constitution. 50 Iowa, 11.

16. In all cases where it is practicable, in precincts outside of cities and towns, the elections shall be held in the public school building, for the use of which there shall be no charge. But all damage to the building or furniture shall be a just claim against the county. Part of section 20, chapter 33, laws of 1892.

17. If any person willfully write, make marks or draw characters on the walls or any other part of any church, college, academy, school-house, court-house or other public building, or willfully injure, or deface the same, or any wall or fence enclosing the same, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than thirty days. Section 3986, Code.

SEC. 1754. He shall, between the first and tenth days of September of each year, prepare a list of the names of the heads of families in his subdistrict, together with the number of children between the ages of five and twenty-one years, distinguishing males from females, and shall record the same in a book kept for that purpose.

SEC. 1755. He shall, between the tenth and fifteenth days of September of each year, report to the secretary of the district township, the number of persons in his subdistrict between the ages of five and twenty-one years, distinguishing males from females.

SEC. 1756. He shall have power, with the concurrence of the president of the board of directors, to dismiss any pupil from the schools in his subdistrict for gross immorality, or for persistent violation of the regulations of the schools, and to re-admit them, if he deems proper so to do; and shall visit the schools in his subdistrict at least twice during each term of said school.

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18. If any person or persons unlawfully or willfully disturb or interrupt any school, school meeting, teachers' institute, lyceum, literary society, or any other lawful assembly of persons being in the peace of the state, such person or persons shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days. Section 4023, Code.

SEC. 1754. 1. The number of persons of school age can be obtained only by a careful and conscientious census. It includes all persons between five and twenty-one years having a residence within the district, even if married.

2. The record book correctly filled out will be of much assistance to the subdirector each year. Form 26.

3. The actual truth as to the number of school age is what is sought. Anything else disturbs the equality which by right exists, and prevents all from receiving exact justice in the apportionments.

4. Children at a state institution, or a private school, should not be enumerated, unless they actually reside in the subdistrict. Note 5 to section 1745.

SEC. 1755. 1. The failure of subdirectors to make their reports, as required by this section, will reduce the semi-annual apportionments for the year, since they are made upon the enumeration of persons of school age.

2. In district townships the secretary should require every subdirector to make this report, and should insist that it be made in writing, and certified to be correct.

3. Each district deserves credit for every one of proper age, but is entitled to no more. It is obvious that a guess or estimate regarding even a single individual is to be avoided.

4. A willful neglect on the part of the subdirector to make the report to the secretary as required, may be found by the courts to be a misdemeanor. Section 3965, Code.

SEC. 1756. 1. The notes to section 1735 apply with equal force to this section, and the same weight should be given them as though repeated here in full.

2. A careful investigation of the charges against the scholar should be made before he is dismissed.

3. The action of the subdirector and president in dismissing a scholar should remain in force for the term only.

TEACHERS.

SECTION 1757. (As amended by Chap. 60, Laws of 1888.) All contracts with teachers shall be in writing, specifying the length of time the school is to be taught, in weeks, the compensation per week, or per month of four weeks, and such other matters as may be agreed upon; and shall be signed by the subdirector or secretary and teacher, and be approved by and filed with the president before the teacher enters upon

SEC. 1757. 1. All contracts made by the subdirector must be approved by the president and reported to the board.

2. The subdirector or secretary should require the teacher to produce the certificate, which he should carefully examine before signing the contract.

3. In district townships the subdirector, in independent districts the secretary represents the district in signing this contract.

4. All matters agreed upon should be incorporated into the written contract. The tendency of our courts is to presume that the written contract embraces the entire agreement of the parties. 52 Iowa, 130.

5. Without special mention in the teacher's contract, it is understood that only the common branches and those included in the course of study for the school, are expected to be taught.

6. If a subdirector desires to teach the school in his own subdistrict, he should resign and contract with the new subdirector appointed by the board.

7. It is the duty of the subdirector or secretary to file the teacher's contract at once with the president of the board, and secure his approval. The copy to be filed with the secretary, and a copy to be retained by the teacher if desired, should also be approved at the same time.

8. The approval of the teacher's contract by the president is a mandatory act, which he cannot refuse to perform, unless the contract is drawn at variance with instructions from the board, or otherwise violates law. 56 Iowa, 573.

9. The board, for what seem good reasons, may order a short vacation. But the term included in the contract cannot be shortened, without the consent of both parties.

10. It is lawful for a board to give teachers holidays and not deduct pay, and quite usual. The teacher, however, may not claim it as a right.

11. The board may authorize the president and secretary to draw orders to pay teachers' salaries at the end of each school month, upon proper evidence that the service has been performed. Note 8 to section 1753.

12. If a teacher is at the school-house at the proper time, and remains during school hours, he is entitled to pay therefor, according to his contract, whether scholars are present or not.

13. As a rule it is highly undesirable to close a school on account of an epidemic. But if the local board of health, or the board of directors, closes a school on account of the presence of a contagious disease, or for like reason, the teacher is entitled to pay upon his contract.

14. When a school is closed for a short time, for causes beyond the control of the teacher, the courts will be likely to hold that the teacher is entitled to his pay according to the terms of his contract. Such cases are best settled by compromise between the parties.

15. If the school-house is destroyed, or the school is closed indefinitely by causes beyond the control of either party to the contract, the teacher being ready to comply with his part, can collect pay according to contract. If said teacher uses

the discharge of his duties, and a copy of all such contracts shall also be filed with the secretary of the board by the subdirector, before the teacher enters upon the discharge of his duties.

SEC. 1758. No person shall be employed to teach a common school which is to receive its distributive share of the school fund unless he shall have a certificate of qualification signed by the county superintendent of the county in which the school is situated, or by some other officer duly authorized by law; and any teacher who commences teaching without such certificate shall forfeit all claim to compensation for the time during which he teaches without such certificate.

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proper diligence to secure employment at something which he can do, and secures such employment, the district will pay him the difference between the amount received in his new work and the amount of his wages under the contract. In other words, his actual loss should be made good.

16. Section 2976, Code, provides that a municipal or political corporation shall not be garnished. However, the corporation may waive exemption from this process. 25 Iowa, 315.

SEC. 1758. 1. The only legal certificates, besides those given by county superintendents, are the perpetual state certificates, issued by the educational board of examiners, prior to September, 1873, when said board was abolished; and state certificates and diplomas given as provided by chapter 167, laws of 1882, amended by chapter 22, laws of 1890.

2. The law requires every holder of a state diploma or state certificate to have the same registered in the office of the county superintendent, before commencing to teach in such county. No fee is required. The superintendent should insist on seeing the document itself and should make his record from such inspection.

3. The teacher must have a certificate during the whole term of school. He is not authorized to teach a single day beyond the period named in his certificate.

4. A teacher's contract is sometimes binding though irregular in some respect. A board should not have the benefit of the services of a teacher without remunerating him. In some cases the board may be held personally liable to pay the teacher.

5. In an Illinois case a certificate was not obtained until the middle of the term. A new contract was entered into at that time to pay the teacher double wages for the remainder of the term. This was considered an attempt to do indirectly what there was no power to do directly, and therefore the contract was held to be void, as was the original contract.

6. In case of the temporary absence of the teacher, from sickness or other cause, the place should be supplied with some one duly authorized to teach, selected by the subdirector. The supply should be paid by the teacher whose place is filled.

7. In case a person is employed or continued as a teacher in violation of law without a certificate, a resident of the district may sue out a writ of injunction restraining the person from teaching and the district from paying. Such a writ cannot be served at the instance of the county superintendent. 17 Iowa, 228. Boards employing and paying such teachers are liable to prosecution under the provisions of the general statutes for misapplication of funds. Sections 3965, 3966 and 3967, Code.

SEC. 1759. The teacher shall keep a correct daily register of the school, which shall exhibit the number or other designation thereof, township and county in which the school is kept; the day of the week, the month and year; the name, age, and attendance of each pupil, and the branches taught. When scholars reside in different districts a register shall be kept for each district.

SEC. 1760. The teacher shall, immediately after the close of his school, file in the office of the secretary of the board of directors, a certified copy of the register aforesaid.

GENERAL PROVISIONS.

SECTION 1761. A school month shall consist of four weeks of five school days each.

SEC. 1759. 1. The teacher may be held responsible for the efficient discharge of every duty properly attached to his office, including the exercise of due diligence in the oversight and preservation of school buildings, grounds, furniture, apparatus, and other school property, as well as the more prominent work of instruction and government.

2. Parties doing damage to school property are responsible for the same. The teacher is bound to exercise reasonable care to protect and preserve school property, and failing to do so may be held liable for damages.

3. Making fires and sweeping the school room are not, properly, a part of the teacher's duties. In rural districts teachers frequently perform this labor as a matter of convenience and economy. Those unwilling to do this work, or who expect to receive pay for it, should so stipulate with the subdirector when entering into the contract to teach. Note 4 to section 1775. S. L. Decisions, 76.

4. Every teacher should take great pains to keep the register required by this section very carefully, in order that the term report required by the next section may be made out correctly. By doing so the secretary will be able to make his annual report with greater ease, and with added accuracy. Form 27.

SEC. 1760. The board may authorize the president and the secretary to draw warrants for the payment of teachers' salaries at the end of each school month, upon proper evidence that the service has been performed, but the order for wages for the last month should not be drawn until the report required by this section is filed in the office of the secretary. Without this register he cannot prepare his annual report as the law directs it to be made. The secretary should carefully examine the register to see whether the record is complete in all respects. Form 28.

SEC. 1761. 1. There are no holidays during which teachers are exempted by the law from teaching, unless excused by the board. A legal contract requires twenty days of actual service for a month.

2. In this state, by common consent and universal custom, New Year's, Memorial Day, Fourth of July, Christmas, and any day recommended by the governor or the president as a day of thanksgiving, are observed as general holidays.

3. It is the commendable custom with very many boards, to allow teachers and scholars the so-called holidays, and to pay the teachers as if those days had been taught.

SEC. 1762. During the time of holding a teachers' institute in any county, any school that may be in session in such county shall be closed; and all teachers, and persons desiring a teacher's certificate, shall attend such institute, or present to the county superintendent satisfactory reasons for not so attending, before receiving such certificate.

SEC. 1763. The electors of any school district at any legally called school meeting, may, by a vote of a majority of the electors present, direct the German or other language to be taught as a branch in one or more of the schools of said district, to the scholars attending the same whose parents or guardians may so desire; and thereupon such board of directors shall provide that the same be done; provided that all other branches taught in said school or schools shall be taught in the English language; provided further that the person employed in teaching the said branches shall satisfy the county superintendent of his ability and qualifications, and receive from him a certificate to that effect.

SEC. 1764. The Bible shall not be excluded from any school or institution in this state, nor shall any pupil be required to read it contrary to the wishes of his parent or guardian.

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4. There is no provision of law giving teachers time to visit other schools. Boards often grant teachers this privilege, under proper restrictions.

5. Custom fixes the maximum length of the school day at six hours. The board may shorten this time somewhat, if thought best.

6. By consent of the board, an occasional Saturday may be taught. But as five days are a school week, the practice is not to be commended.

SEC. 1762. It may be questioned whether the provisions of this section apply to the present normal institutes, held under section 1769.

SEC. 1763. 1. The electors may not limit or restrict the board to the adoption of a course of study including only such branches as the electors may name. Nor may the electors direct that a particular branch, or certain studies, shall not be taught. It is the province of the board to decide what branches besides those in a teacher's examination and those named by the electors, shall be included in the course of study and taught in the schools of their district. Note 9 to section 1717.

2. A teacher who instructs in any of the languages referred to, in addition to other work as teacher, must have the certificate required by this section, additional to the one demanded by the first part of section 1766, but a teacher who teaches only one or more of the languages referred to above, or any other special branch, may be required to have a certificate for such branch, as provided by the last part of section 1766, and need not have the other certificate, unless desired.

SEC. 1764. 1. Our common schools are maintained at public expense, and the law contemplates that they shall be equally free to persons of every faith. A very suitable devotional exercise consists in the teacher reading a portion of Scripture without comment, and the repetition of the Lord's Prayer.

2. Neither the board nor the electors may direct the teacher to follow a given course in respect to the reading of the Bible in school. Each teacher will be guided by his own good judgment, and the wishes of his patrons may properly have weight in aiding him to determine his action.

3. While moral instruction should be given in every school, neither this section nor the spirit of our constitution and laws will permit a teacher or board to enforce

Chapter 167, Laws of 1882.

[As amended by Chapter 22, Laws of 1890.]

CREATING A STATE BOARD OF EXAMINERS.

Section 1. The superintendent of public instruction, the president of the state university, the principal of the state normal school, and two persons, to be appointed by the executive council, one of whom shall be a woman, for terms of four years; provided that of the two first appointed, one shall be for two years; and provided further that no one shall be his own successor in said appointments; are hereby constituted a state board of examiners, with the superintendent of public instruction as *ex officio*, its president.

Sec. 2. The board shall meet at such times and places as its president shall direct, for transaction of business, and shall hold annually, at least two public examinations of teachers, at each of which examinations one member of the board shall preside, assisted by such well qualified teachers, not to exceed two in number, as the board of examiners may elect. Said board may adopt such rules, not inconsistent herewith, and with the statutes of Iowa, as they may deem proper; and said board shall keep a full record of their proceedings, and a complete register of all persons to whom certificates and diplomas are issued.

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a regulation in regard to religious exercises, which will wound the conscience of any, and no scholar can be required to conform to any particular mode of worship. 64 Iowa, 367.

4. Moral instruction tending to impress upon the minds of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism, and respect for honest labor, obedience to parents and due deference for old age, shall be given by every teacher in the public schools. School Laws of North Dakota, 1891.

5. The law intends that the public schools of the state shall be absolutely free from any sectarian or denominational bias. The teaching of any peculiar religious doctrine or creed, or the use of any book prepared for the purpose of inculcating such doctrine or creed, is strictly forbidden by the spirit of our law, and cannot be justified or allowed in any case.

6. If a teacher gives religious instruction or teaches in the interest of any church or denomination, the board may be prevented from continuing or sanctioning such instruction, by injunction from the courts, and having ordered or countenanced this instruction may be prevented in the same manner from paying such teacher from the public school funds.

7. The diversion of the school fund in any form or to any extent for the support of sectarian or private schools is inadmissible and clearly in violation of our laws. 59 Iowa, 70.

8. Public money shall not be appropriated, given or loaned by the corporate authorities, supervisors, or trustees of any county, township, city or town, or municipal organization of this state, to, or in favor of, any institution, school, association, or object, which is under ecclesiastical or sectarian management or control. Section 552, Code.

SEC. 3. Said board shall have power to issue state certificates and state diplomas to such teachers as are found, upon examination, to possess good moral character, thorough scholarship, clear and comprehensive knowledge of didactics, and successful experience in teaching. They shall also have power to issue state certificates and state diplomas to such graduates of any Iowa state normal school, as are shown to possess good moral character, the certificate to be issued when the graduate is proved to have had thirty-six weeks' successful experience in teaching, and the diploma when five years' such experience is shown.

SEC. 4. Candidates for state certificates shall be examined upon the following branches: Orthography, reading, writing, arithmetic, geography, English grammar, bookkeeping, physiology, history of the United States, algebra, botany, natural philosophy, drawing, civil government, constitution and laws of Iowa, and didactics; and candidates for state diplomas shall pass examination upon all branches required by candidates for state certificates, and in addition thereto in geometry, trigonometry, chemistry, zoology, geology, astronomy, political economy, rhetoric, English literature, and general history, and such other branches as the board of examiners may require.

SEC. 5. A state certificate shall authorize the person, to whom it is issued, to teach in any public school of the state for the term of five years from the date of its issue, and a state diploma shall be valid for the life of the person to whom it is issued; provided that any state certificate, and any state diploma, may be revoked by the board of examiners for any cause of disqualification, on well-founded complaint entered by any county superintendent of schools.

SEC. 6. The fee for each state certificate shall be three dollars, and for each state diploma five dollars, which fee shall be paid before examination to such person as the board of examiners may designate from their own number, and the same shall be paid into the state treasury when so collected; provided that if such applicant shall fail in said examination, one-half of the fee shall be returned.

SEC. 7. Every holder of a state certificate, or of a state diploma, shall have the same registered, by the county superintendent of schools of the county in which he wishes to teach, before entering upon his work, and each county superintendent of schools is required to include in his annual report to the superintendent of public instruction, a full account of the registration of state certificates and diplomas.

CHAPTER 167, LAWS OF 1882.

SECTION 7. 1. No fee is required for the registration referred to, but it is essential that such record be made before the person commences to teach.

2. Holders of state certificates or diplomas are not exempt from reporting to the county superintendent, or complying in every respect with requirements made of other teachers, except as to examination for certificates.

SEC. 8. Each member of the state educational board of examiners, and each person appointed by said board to assist in conducting examinations, as provided for in section 2 of this act, shall be entitled to receive, for the time actually employed in such service, his necessary expenses. And provided further that each member of said board, not a salaried officer, shall, in addition to his necessary expenses, receive the sum of three dollars per day, he or she is actually employed in said examination, which amounts shall be certified by the superintendent of public instruction; and the auditor of state is hereby authorized to audit and draw his warrant for the same upon the treasurer of state, provided the aggregate amount for any one year shall not exceed three hundred dollars.

SEC. 9. The board of examiners shall keep a detailed and accurate account of all moneys received and expended by them, which, with a list of the names of persons receiving certificates and diplomas, shall be published by the superintendent of public instruction in his annual report.

COUNTY SUPERINTENDENT.

CHAPTER 136, LAWS OF 1876.

WOMEN ELIGIBLE TO SCHOOL OFFICES.

SECTION 1. No person shall be deemed ineligible, by reason of sex, to any school office in the state of Iowa.

SEC. 2. No person who may have been or shall be elected or appointed to the office of county superintendent of common schools or school director in the state of Iowa, shall be deprived of office by reason of sex.

SECTION 1765. The county superintendent shall not hold any office in, or be a member of the board of directors of a district township or independent district, or of the board of supervisors during the time of his incumbency.

SEC. 1766. (As amended by Chap. 143, Laws of 1878.) On the last Saturday of each month, the county superintendent shall meet all persons desirous of passing an examination, and for the transaction of other business within his jurisdiction, in some suitable room provided for that purpose by the board of supervisors at the county seat, at which time he shall examine all such applicants for examination as to their competency

SEC. 1766. 1. This is a most important and difficult labor. Written examinations afford a good test of scholarship, and furnish the basis of a permanent record. The examination should be thorough, to determine the attainments of the applicant in the branches he is expected to teach.

2. Applications made at other times should be rejected, unless good reasons are given for not attending the regular examinations. The interests of the schools do

and ability to teach orthography, reading, writing, arithmetic, geography, English grammar, physiology, and history of the United States; and in making such examination, he may, at his option, call to his aid one or more assistants. Teachers exclusively teaching music, drawing, penmanship, book-keeping, German or other language, shall not be required to be examined except in reference to such special branch, and in such cases it shall not be lawful to employ them to teach any branch except such as they shall be examined upon and which shall be stated in the certificate.

SEC. 1767. If the examination is satisfactory, and the superintendent is satisfied that the respective applicants possess a good moral character,

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not require frequent or individual examinations, and the time of the superintendent can be more profitably employed in the performance of other duties. 49 Iowa, 245.

3. We think the ability to teach the different branches may be best determined by actual observation of the teacher's work in his school. A searching and skillfully conducted oral examination in methods will test the applicant's ability to instruct.

4. If it is desired that branches additional to those included in the general certificate shall be taught, such fact should be mentioned as a part of the contract, and the teacher is required to have the certificate for such additional branch or branches, before beginning to teach.

5. It is the intention of the law that the study of physiology and hygiene with special reference to the effects of alcoholic drinks, stimulants and narcotics, shall have equal rank and be considered of the same importance as other branches of study.

6. The examination papers of applicants are for the information of the county superintendent alone, and are not public records. Note 2 to section 1768.

SEC. 1767. 1. County superintendents should remember that they are to inquire, not only into the literary qualifications of the applicant, but they must also certify that they are satisfied that the applicant possesses a good moral character, and the essential qualifications for governing and instructing children and youth. Form 29.

2. Scholarship, good moral character, ability to govern, aptness to teach, our law requires all these qualifications in those to whom are intrusted the highest interests of the state, the education of its youth.

3. Applicants may be required to present such evidences of good moral character as the county superintendent shall demand. The superintendent should be fully satisfied in every particular mentioned in the law, before issuing the certificate. S. L. Decisions, 115.

4. The county superintendent is sole judge of the manner and extent of the examination he will require of applicants for certificates to teach in his county 52 Iowa, 111.

5. It is usually desirable that some of the work of every applicant shall be filed with the county superintendent, as a record which will serve to prove for the candidate, that he received his certificate upon merit.

6. The renewal or indorsement of certificates is not provided for by law.

7. By section 1769, the county superintendent is made responsible to the institute fund for one dollar from every applicant examined.

and the essential qualifications for governing and instructing children and youth, he shall give them a certificate to that effect, for a term not exceeding one year.

SEC. 1768. Any school officer or other person shall be permitted to be present at the examination; and the superintendent shall make a record of the name, residence, age, and date of examination of all persons so examined, distinguishing between those to whom he issued certificates and those rejected.

SEC. 1769. (As amended by Chap. 57, Laws of 1874, and Chap. 54, Laws of 1878.) The county superintendent shall hold, annually, a normal institute for the instruction of teachers and those who may desire to teach, and with the concurrence of the superintendent of public instruction, procure such assistance as may be necessary to conduct the same, at such time as the schools in the county are generally closed. To defray

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8. After ascertaining the general attainments of teachers, inspection of their school work should determine largely the grade of certificate.

9. The law fixes only the maximum time for which a certificate may be given. The minimum is left to the discretion of the county superintendent, but it is desirable in the case of advanced teachers, to make the time as near one year as possible.

10. The so-called professional certificate was a special form recommended by this department for a short time very many years ago, but it has fallen almost out of use. Since the revival of the state certificate there has seemed to be still less need for the professional certificate.

11. For many years, county superintendents have been limited as to the minimum age of those receiving certificates. The restriction has given almost universal satisfaction. It is believed that in general, boys under nineteen, and girls under seventeen years of age, may not be expected to possess that maturity of mind and strength of character needed to manage a school successfully, and to determine wisely the many important questions daily demanding an answer from the teacher.

SEC. 1768. 1. The record required by this section should be carefully made, as the items form a part of the county superintendent's annual report to the superintendent of public instruction.

2. The examination manuscripts of applicants are for the information of the county superintendent and do not become a part of the public records of the office. Candidates may not demand the privilege of inspecting their markings as a right. Note 6 to section 1766.

3. A certificate may not be issued upon an examination taken in another county. In addition to furnishing any credentials or other written evidence which the examiner may require, the applicant must appear in person.

4. The examination may be taken in parts, at different times, and may be continued until the record is made closing the examination.

SEC. 1769. 1. The normal institute must be held at a time when the public schools are generally closed.

2. County superintendents will determine the time and place, and suggest names of conductor and instructors for approval, making application to the superintendent of public instruction according to form 32, at least thirty days before the institute is to commence. This application and the appointment are necessary to secure the state appropriation.

the expenses of said institute, he shall require the payment of a registration fee of one dollar from each person attending the normal institute, and shall also require the payment, in all cases, of one dollar from every applicant for a certificate. He shall, monthly, and at the close of each institute, transmit to the county treasurer, all moneys so received, including the state appropriation for institutes, to be designated the institute fund; together with a report of the name of each person so contributing, and the amount. The board of supervisors may appropriate such additional sum as may by them be deemed necessary for the further support of such institute. All disbursements of the institute fund shall be upon the order of the county superintendent; and no order shall be drawn except for bills presented to the county superintendent, and approved by him, for services rendered or expenses incurred in connection with the normal institute.

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3. The length of time during which the normal institute shall remain in session is left to the discretion of the county superintendent. This will depend largely upon the amount of the institute fund. It cannot remain in session less than one week of six days. Section 1584.

4. Young and inexperienced teachers will not expect to receive certificates, unless of the lowest grade, without regularly attending the normal institute. By means of the large fund and the length of time this institute may remain in session, it can, if the proper means are employed, be rendered invaluable to teachers. The benefits which they will receive should secure their voluntary and general attendance.

5. A conductor of successful experience in institute work, able to give plain, practical instruction in methods of school organization, government and teaching, should be secured early. The other instructors should be superior teachers of recent experience, and, where practicable, one or more lady teachers should be employed.

6. County superintendents should have sufficient evidence of the abilities of their instructors before employing them. In all cases where strangers are employed, references should be required, and inquiries made at the state department will frequently secure the proper knowledge.

7. The superintendent should be director, assuming the general oversight and direction of the institute, but should not act as conductor. He is entitled to his *per diem* for any service in connection with the institute, as for other official duties, but receives no part of the institute fund.

8. These normal institutes are short training schools, their object is to reach and correct the greatest defects found in the schools. The superintendent in visiting schools should seek to discover the most prominent defects and wants in the methods of instruction. The normal institute will afford effective means of reaching and correcting these faults. The great object is to instruct teachers how to teach children.

9. The reports and payments to the county treasurer, required by this section, should be made on the first day of each month. Forms 30, 31, 33 and 34.

10. It is the duty of the board of supervisors, at the close of his term of office, to settle with the county superintendent, as with other county officers, according to the provisions of the law.

SEC. 1770. If, for any cause, the county superintendent is unable to attend to his official duties he shall appoint a deputy to perform them in his stead, except visiting schools and trying appeals.

SEC. 1771. The superintendent may revoke the certificate of any teacher in the county which was given by the superintendent thereof, for any reason which would have justified the withholding thereof when the same was given, after an investigation of the facts in the case, of which investigation the teacher shall have personal notice, and he shall be permitted to be present and make his defense.

SEC. 1772. On the first Tuesday of October of each year he shall make a report to the superintendent of public instruction, containing a full abstract of the reports made to him by the respective district secretaries, and such other matters as he shall be directed to report by said superintendent, and as he himself may deem essential in exhibiting the true condition of the schools under his charge; and he shall, at the same time,

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SEC. 1770. Both the appointment and his bond must be approved by the board of supervisors before the deputy may enter upon his duties.

SEC. 1771. 1. The notice should contain an explicit statement of the charges against which the teacher is expected to make his defense. Form 35. S. L. Decisions, 41 and 84.

2. Any person aggrieved by an action of the county superintendent in refusing to grant a certificate or in revoking the same, may apply to him for a rehearing, the proceedings to correspond as nearly as possible to the proceedings in the case of an appeal from a board of directors. If any party is aggrieved by the result of this investigation, an appeal may be taken therefrom to the superintendent of public instruction.

3. Though an appeal will lie in such cases, the discretion of a county superintendent in refusing or revoking a teacher's certificate will not be interfered with by the superintendent of public instruction, unless it is clearly shown that in such act the county superintendent violated law or abused discretion. S. L. Decisions, 17 and 138.

SEC. 1772. 1. The blanks for the annual report of the county superintendent together with instructions for making the report, are furnished by the superintendent of public instruction.

2. The superintendent may test the accuracy of the treasurers' reports by consulting the books of the county treasurer. The amount of the several funds reported received from the district tax, also the amount received from the semi-annual apportionments, must agree with the county treasurer's receipts for the same.

3. All errors should be corrected. The amounts reported on hand in the last report from the district treasurer should the following year always be reported as the amounts on hand at last report.

4. The abstract of the enumeration of children in each district should be made with special care, and should be complete and accurate, otherwise the county will not obtain its just proportion of the income of the permanent school fund.

5. Should the district secretaries or treasurers fail to make their reports in time, the superintendent should take prompt measures to secure them, going after them if necessary.

file with the county auditor a statement of the number of persons between the ages of five and twenty-one years in each school district in his county.

SEC. 1773. Should he fail to make either of the reports required in the last section he shall forfeit to the school fund of his county the sum of fifty dollars, and shall, besides, be liable for all damages caused by such neglect.

SEC. 1774. (As amended by Chap. 161, Laws of 1882.) He shall at all times conform to the instructions of the superintendent of public instruction, as to matters within the jurisdiction of the said superintendent. He shall serve as the organ of communication between the superintendent and township or district authorities. He shall transmit to the townships, districts, or teachers, all blanks, circulars, and other communications which are to them directed. He may, at his discretion, visit the different schools in his county, and shall, at the request of a majority of the directors of a district, visit the school in said district at least once during each term.

SEC. 1775. He shall report on the first Tuesday of October of each year to the superintendent of the Iowa college for the blind, the name, age, residence, and post office address of every person blind to such an extent as to be unable to acquire an education in the common schools and who resides in the county in which he is superintendent, and also to the superintendent of the Iowa institution for the deaf and dumb, the name, age, and post office address of every deaf and dumb person between the ages of five and twenty-one who resides within his county, including all such persons as may be deaf to such an extent as to be unable to acquire an education in the common schools.

SEC. 1774. 1. The county attorney is the legal adviser of the different county officers. Section 3, chapter 73, laws of 1886. He should be freely consulted on questions of law upon which the superintendent is in doubt.

2. The superintendent in his visits should seek to aid, instruct, and inspire teachers to the employment of the best methods of teaching, governing, and conducting their schools, should try to secure the proper classification of scholars, the arrangement of courses of study, and the care and protection of school property. He should study to awaken among parents and children a deeper interest in the public schools, so as to secure improved attendance, deportment and scholarship, and more frequent visits of parents and school officers. A judicious visit from the superintendent may often serve to infuse new life into the school.

3. The county superintendent should carefully observe the condition of the school-house and surroundings, note all defects, and notify the subdirector or board of the same.

SEC. 1775. 1. The blanks for these reports are furnished by the superintendents of the respective institutions.

2. It shall be the duty of the county superintendent to report to the superintendent of the institution for feeble-minded children, on the first day of October of each year, the name, age and post office address of every person in his county between the ages of five and twenty-one, who by reason of feeble mental and

SEC. 1776. (As amended by Chap. 161, Laws of 1882.) The county superintendent shall receive from the county treasurer the sum of four dollars per day for every day necessarily engaged in the performance of official duties, and also the necessary stationery and postage for the use of his office, and he shall be entitled to such additional compensation as the board of supervisors may allow; provided, that he shall first file a sworn statement of the time he has been employed in his official duties, with the county auditor.

TAXES.

SECTION 1777. The board of directors shall, at their regular meeting in March of each year, or at a special meeting convened for that purpose, between the time designated for such regular meeting and the third Monday in May, estimate the amount required for the contingent fund, and also such sum as may be required for the teachers' fund, in addition to the amount received from the semi-annual apportionment, as shown by the notice from the county auditor, to support the schools of the district for the time required by law for the current year; and shall cause the secretary to certify the same, together with the amount voted

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physical condition is deprived of a reasonable degree of benefit from the common schools. He shall also state in said report whether or not such person has ever attended school, and how long, if at all, and he shall also give the post office address of the parent, guardian, or nearest friend of such person. Section 6, chapter 40, laws of 1882.

SEC. 1776. 1. The board of supervisors shall furnish the county superintendent with an office at the county seat, together with fuel, lights, blanks, books and stationery necessary and proper to enable him promptly and properly to discharge the duties of his office, but in no case shall such officer be permitted to occupy an office also occupied by a practicing attorney. Section 3844, Code.

2. The board of supervisors may not limit the county superintendent as to the number of days he shall give to his work, in order to comply with his oath of office. Having filed his sworn statement in the form prescribed by the board, he is entitled to his *per diem* for time actually employed. If he has filed a false statement he may be tried for maladministration in office, as provided for in section 746, Code.

3. It is the intention of the law that each county superintendent shall determine the time necessary to be employed in the duties of his office, and the division of labor to be made. Of course, specific duties are required, such as making certain reports at times designated, visiting a school if requested by the board, and that he shall conform to instructions from the superintendent of public instruction. But in general, he is to decide for himself, as indicated in his oath of office, what means will best advance the work in his county.

SEC. 1777. 1. This section requires boards to certify the specific sums necessary to be raised for teachers' and contingent fund to the board of supervisors, whose duty it is to estimate and levy the per centum necessary to raise the amounts so certified. Forms 36 and 37.

2. A tax voted after the third Monday in May is void. This renders it essential that boards act promptly and certify taxes within the required time. 73 Iowa, 304.

for school-house purposes, within five days thereafter to the board of supervisors, who shall at the time of levying taxes for county purposes, subject to the provisions of section seventeen hundred and eighty of this chapter, levy the per centum necessary to raise the sum thus certified upon the property of the district township, which shall be collected and paid over as are other district taxes.

SEC. 1778. They shall apportion any tax voted by the district township meeting for school-house fund, among the several subdistricts in such a manner as justice and equity may require, taking as the basis of such apportionment the respective amounts previously levied upon said subdistricts for the use of such fund; provided, that if the electors of one or more subdistricts at their last annual meeting shall have voted to raise a sum for school-house purposes greater than that granted by the electors at their last annual meeting of the district township, they shall estimate the amount of such excess on such subdistrict or subdistricts,

3. It is the rule that school-house funds must be voted by the electors. Exceptions, sections 1787, 1804, 1823, and 3049.

4. It is wholly within the discretion of the board of directors to determine the amounts required for the contingent and teachers' funds. 41 Iowa, 153. Any vote of the electors with reference to these amounts is only suggestive, and is not at all binding.

5. Section 1780 limits the amount which may be levied in a district township for any one year, to fifteen dollars per scholar for teachers' fund and five dollars per scholar for contingent fund, but authorizes the levy of seventy-five dollars for contingent, and two hundred and seventy dollars for teachers' fund for each subdistrict, even if the levy thereby exceeds five and fifteen dollars per scholar, for these funds.

6. If the amount of school-house tax voted and certified by the board of directors in any year exceeds the limit which the board of supervisors is allowed to levy, under the provisions of section 1780, it is the duty of the board of directors to certify the amount of the deficiency from year to year until the whole amount is levied.

7. The teachers' and contingent funds are not to be apportioned among the subdistricts, but levied uniformly on the taxable property of the district township.

8. Chapter 67, laws of 1874, authorizes districts formed from territory lying in adjoining counties, to vote and certify to the respective boards of supervisors the number of mills on the dollar required to raise the necessary school taxes.

SEC. 1778. 1. All school-house taxes must be voted either by the district or by the subdistrict electors. Sections 1717 and 1807. When voted they must in all cases be certified to the board of supervisors. S. L. Decisions, 90.

2. For the purpose of collection, all taxes voted by the district township meeting must be apportioned among the subdistricts of the township. The basis of this apportionment is the aggregate number of mills previously levied upon the subdistricts of the township for school-house purposes, and the division should be made so as gradually to equalize these rates, in order that the school-house tax may, ultimately, be uniform throughout the district. Form 37.

3. The township electors may vote a tax for the erection of a school-house in any subdistrict, without previous action of the subdistrict electors.

and cause the secretary to certify the same within five days thereafter to the board of supervisors, who shall, at the time of levying taxes for county purposes, levy the per centum of such excess on the taxable property of the subdistrict asking the same, provided that not more than fifteen mills on the dollar shall be levied on the taxable property of any subdistrict for any one year for school-house purposes.

BOARD OF SUPERVISORS.

SECTION 1779. The board of supervisors of each county shall, at the time of levying the taxes for county purposes, levy a tax for the support of schools within the county, of not less than one mill, nor more than three mills on the dollar, on the assessed value of all the real and personal property within the county, which shall be collected by the county treasurer at the time and in the same manner as state and county taxes are collected, except that it shall be receivable only in cash.

SEC. 1780. They shall also levy at the same time the district school tax certified to them from time to time by the respective district secretaries; provided that the amount levied for school-house fund shall not exceed ten mills on the dollar, on the property of any district, and the amount levied for contingent fund shall not exceed five dollars per pupil, and the amount raised for teachers' fund, including the amount received from the semi-annual apportionment, shall not exceed fifteen dollars per

4. If the subdistrict electors vote to raise a sum for school-house purposes, it is the duty of the subdirector to certify the same to the district township meeting. If this duty is neglected, the board of directors is not authorized to certify the tax voted. Forms 5 and 38.

5. Whatever portion of the sum, properly certified, the district meeting neglects or refuses to grant, must be certified and levied directly upon the subdistrict voting, in addition to the equitable portion of the whole amount voted by the district township meeting. If the meeting refuses to vote any amount, the whole must be certified and levied upon the subdistrict. 69 Iowa, 533. S. L. Decisions, 52 and 90.

6. The tendency of the action of the subdistrict electors in voting school-house taxes is to produce unequal rates of taxation for school-house purposes, and otherwise greatly to complicate the raising of school-house funds; hence, unless the necessities of the case absolutely require, such action should not be encouraged. All necessary school-house taxes should, as a rule, be voted by the district township meeting. Note (*c*) to form 3.

SEC. 1780. 1. The first proviso does not apply where a larger tax is required to meet the interest on valid outstanding bonds. 69 Iowa, 612.

2. The second proviso in this section was added for the relief of sparsely settled townships, in which five dollars per scholar for contingent fund and fifteen dollars per scholar for teachers' fund, is not adequate to maintain schools for the time required by law. In such districts these limits may be exceeded, providing that not more than $75 contingent fund, and $270, including the semi-annual apportionment, for teachers' fund, is levied for each subdistrict in the township.

pupil for each pupil residing in the district, as shown by the last report of the county superintendent. And if the amount certified to the board of supervisors exceeds this limit, they shall levy only to the amount limited; provided that they may levy seventy-five dollars for contingent fund, and two hundred and seventy dollars, including the amount received from the semi-annual apportionment, for the teachers' fund for each subdistrict.

COUNTY AUDITOR.

SECTION 1781. The county auditor shall, on the first Monday in April and the fourth Monday in September of each year, apportion the county school tax, together with the interest of the permanent school fund to which his county is entitled, and all other money in the hands of the county treasurer belonging in common to the schools of his county, and not included in any previous apportionment, among the several subdistricts therein, in proportion to the number of persons between five and twenty-one years of age, as shown by the report of the county superintendent, filed with him for the year immediately preceding.

SEC. 1782. He shall immediately notify the president of each school district of the sum to which his district is entitled by said apportionment, and shall issue his warrant for the same to accompany said notice, which warrant shall be also signed by the president and countersigned by the secretary of the district in whose favor the same is drawn; and shall authorize the district treasurer to draw the amount due said district from the county treasurer; and the secretary shall charge the treasurer of the district with all warrants drawn in his favor, and credit him with all warrants drawn on the funds in his hands, keeping separate accounts with each fund.

SEC. 1783. He shall forward to the superintendent of public instruction, a certificate of the election or appointment and qualification of the county superintendent; and shall, also, on the second Monday in Feb-

SEC. 1781. The word subdistricts in the sixth and seventh lines of this section, evidently means the present *district*.

SEC. 1782. This account, properly kept by the secretary, will assist boards in their frequent settlements with the treasurer, as required by section 1732. Form 39.

SEC. 1783. It is important that the certificate referred to, should be promptly forwarded to the superintendent of public instruction, otherwise the interests of the county may suffer by the transaction of business with persons not duly authorized to act. The certificate should in all cases certify to the qualification, as well as the election or appointment of the county superintendent; for, although he may be properly elected or appointed, yet he cannot be recognized until it is known that he has taken the necessary oath of office, and filed the required bond. Whenever any change is made by resignation or otherwise, a certificate of the appointment and qualification of a successor should be immediately forwarded. Forms 40 and 41.

ruary and August of each year, make out and transmit to the auditor of state, in accordance with such form as said auditor may prescribe, a report of the interest of the school fund then in the hands of the county treasurer, and not included in any previous apportionment, and also the amount of said interest remaining unpaid.

COUNTY TREASURER.

SECTION 1784. The county treasurer shall, on the first Monday in April of each year, pay over to the treasurer of the district, the amount of all school district tax which shall have been collected, and shall render him a statement of the amount uncollected, and shall pay over the amount in his hands quarterly, thereafter. He shall also keep the amount of tax levied for school-house purposes, separate in each subdistrict, where such levy has been made directly upon the property of the subdistrict making the application, and shall pay over the same, quarterly, to the township treasurer for the benefit of such subdistrict. He shall, in all counties wherein independent districts are organized, keep a separate account with said independent districts, in which the receipts shall be daily entered, which books shall at all times be open to the inspection and examination of the district board of directors, and shall pay over to the said independent districts the amount of school taxes in his possession on the order of the board, on the first day of each and every month.

SEC. 1785. On the first day of each quarter, the county treasurer shall give notice to the president of the school board of each township, in his county, of the amount collected for each fund; and the president of each board shall draw his warrant, countersigned by the secretary, upon the county treasurer, for such amount, who shall pay the amount of such taxes to the treasurers of the several school boards, only on such warrants.

MISCELLANEOUS.

SECTION 1786. (As amended by Chap. 73, Laws of 1886.) All fines and penalties collected from a school district officer by virtue of any of

SEC. 1785. 1. The three funds, school-house, teachers' and contingent, must be kept separate by the county treasurer, as directed in this section, to enable school officers to comply with the law in the discharge of their official duties. Sections 1739, 1741, 1745, 1748, 1750, and 1782. Form 42.

2. The division of funds made by the county treasurer should be respected by the board, unless the electors direct school-house funds unappropriated transferred to other funds. This is the only transfer provided for by law. Note 14 to section 1717 and note 7 to section 1748.

SEC. 1786. The sureties on an official bond cannot be held after the lapse of three years. Section 2529, Code.

the provisions of this chapter, shall inure to the benefit of that particular district. Those collected from any member of the board of directors, shall belong to the district township, and those collected from county officers, to the county. In the two former cases, suit shall be brought in the name of the district township; in the latter, in the name of the county and by the county attorney. The amount in each case shall be added to the fund next to be applied by the recipient, for the use of common schools.

SEC. 1787. When a judgment has been obtained against a school district, the board of directors shall pay off and satisfy the same from the proper fund, by an order on the treasurer; and the district meeting, at the time for voting a tax for the payment of other liabilities of the district, shall provide for the payment of such order or orders.

SEC. 1788. In case a school district has borrowed money of the school fund, the board of supervisors shall levy such tax, not exceeding five mills on the dollar in any one year, on the taxable property of the district as constituted at the time of making such loan, as may be necessary to pay the annual interest on said loan, and the principal, when the same falls due, unless the board of supervisors shall see proper to extend the time of said loan.

SEC. 1789. (As amended by Chap. 51, Laws of 1888.) No district township or subdistrict meeting shall organize earlier than nine o'clock A. M., nor adjourn before 12 o'clock M.; and in all independent districts having a population of three hundred and upward, the polls shall remain open from twelve o clock M. to seven o'clock P. M.

SEC. 1790. Any school director, or director elect, is authorized to administer to any school director elect, the official oath required by law,

SEC. 1787. An order drawn under this section is not entitled to payment to the exclusion of other orders on the school-house fund. 40 Iowa, 620. Note 3 to section 1747.

SEC. 1789. 1. The object of this section is to prevent a few designing persons from meeting at an unusual hour, dispatching the business with unseemly haste, and adjourning before many of the electors arrive. The meeting should be conducted with entire fairness, and an opportunity given for an expression of the real sentiment of the district.

2. In district townships, subdistricts, and in independent districts containing less than three hundred inhabitants, the meeting may be organized at any time after 9 o'clock a. m., and before 6 o'clock p. m., and may continue as much more than three hours as the circumstances may require.

3. The law contemplates at least three hours for the election in any case. Iowa Reports, 37, 131; 39, 380. Note 2 to section 1718.

4. Independent districts of 15,000 and upwards are not governed by this section. Chapter 8, laws of 1880.

SEC. 1790. 1. When an election is contested, the person elected shall have twenty days in which to qualify, after the date of the decision. Section 687, Code.

and said official oath may be taken, on or before the third Monday in March following the election of directors.

SEC. 1791. When any school officer is superseded by election or otherwise, he shall immediately deliver to his successor in office, all books, papers, and moneys pertaining to his office, taking a receipt therefor; and every such officer who shall refuse to do so, or who shall willfully mutilate or destroy any such books or papers, or any part thereof, or shall misapply any moneys entrusted to him by virtue of his office, shall be liable to the provisions of the general statutes for the punishment of such offense.

SEC. 1792. Nothing in this chapter shall be so construed as to give the board of directors of a district township jurisdiction over any territory included within the limits of any independent district.

ATTENDANCE.

CHAPTER 166, LAWS OF 1878.

TUITION OF PAUPER CHILDREN.

SECTION 1. Section 1381 of the Code is hereby amended by adding at the end of the section: The expense of the poor-house shall include such an amount of tuition for the instruction of the pauper children, as the whole number of days' attendance of such pauper children, is to the total number of days' attendance in the school at which pauper children attend, and such amount shall be paid into the treasury of the district where said children attend.

SECTION 1793. (As amended by Chap. 64, Laws of 1876, and Chap. 41, Laws of 1878.) Children residing in one district may attend school in another in the same or adjoining county or township, on such terms as may be agreed upon by the respective boards of directors; but in case no such agreement is made, they may attend school in any such adjoining district, with the consent of the county superintendent of the county where said pupils reside and the board of directors of said adjoining

2. The secretary, unless he is a member of the board, or a civil officer qualified to administer oaths, cannot administer the oath. Any director or subdirector, whether holding over or elected, can administer the oath of qualification.

3. The decision of a tie vote, as made by chapter 7, laws of 1880, may make it impossible for the person chosen to qualify on the third Monday in March. In such case, the board should fix a reasonable time within which the person must qualify. The provisions of section 687, Code, may perhaps apply. See note 1 above.

SEC. 1791. The language of this section includes copies of the school laws, school journals, reports, and all other publications which may be received by virtue of being a school officer. Sections 3908, 3917, 3918, and 3929, Code.

SEC. 1793. 1. If scholars reside more than one and one-half miles from a school in their own district and nearer to a school in an adjoining district, which they desire to attend, application should first be made to both boards of directors;

district, when they reside nearer the school in said district, and one and a half miles or more, by the nearest traveled highway, from any school in their own. The board of directors of the township in which such children reside, shall be notified in writing and the district in which they reside shall pay to the district in which they attend school, the average tuition of said children per week, and an average proportion of the contingent expenses of said district where they attend school; and in case of refusal so to do, the secretary shall file the account for said tuition and contingent expenses, certified to by the president of his board, with the county auditor of the county in which said children reside, and the said county auditor shall, at the time of making the next semi-annual apportionment thereafter, deduct the amount so certified

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if the boards refuse to enter into an agreement, they may attend school in such adjoining district with the consent of the board of the district where they desire to attend and of the county superintendent of the county in which the children reside.

2. There is no provision of law by which the district may pay the board or other expenses of scholars, except tuition and contingent expenses.

3. In giving or withholding his consent, the county superintendent should consider all the circumstances, and when he has concurred or refused to concur, the matter is concluded for that time, as no appeal will lie.

4. This section applies also to all districts, whether in the same or in adjoining civil townships.

5. The distance should, in all cases, be computed by the nearest public road.

6. If scholars live nearer to a school in their own district, or less than one and one-half miles of one, they can attend school in an adjoining district at the expense of their own district, only by an agreement of both boards.

7. In no case may scholars attend school in a district in which they do not reside, without the consent of the board thereof.

8. The notice referred to cannot be said to be officially transmitted unless signed by both the president and secretary. Payment for attendance can be collected from the district where the children reside, only from the date of such notice. Form 43.

9. This notice holds only for the term, or such time as the county superintendent and board name in their written concurrent agreement.

10. Depositing a letter in a postoffice without further proof that such letter reached the party addressed, is not a legal notice as required by section 1793 to secure payment of tuition on the part of an adjoining district.

11. The average proportion of tuition and contingent expenses for any number of scholars is found by dividing the amount expended for these purposes in the subdistrict where they have attended, by the total attendance in days, and multiplying the quotient by the number of days said scholars have attended.

12. When scholars attend a graded school, the average tuition should be computed on the basis of the expense of each pupil in the grade or room in which such scholars are placed; the average expense of contingent fund may be computed as a part of the whole contingent expense of such school.

13. Any other action than compliance with the absolute and explicit terms of the law, will render the collection of tuition difficult and in most cases impossible. S. L. Decisions, 77 and 118.

from the sum apportioned to the district in which said children reside and cause it to be paid over to the district in which they have attended school.

SEC. 1794. Pupils who are actual residents of a district shall be permitted to attend school in the same, regardless of the time when they acquired such residence, whether before or after the enumeration, or of the residence of their parents or guardians; but pupils who are sojourning temporarily in one district, while their actual residence is in another, and to whom the last preceding section is not applicable, may attend school upon such terms as the board of directors may deem just and equitable.

SEC. 1795. Pupils may attend school in any subdistrict of the district township in which they reside, with the consent of the subdirector of such subdistrict, and of the subdirector of the subdistrict in which such pupils reside.

BOUNDARIES.

SEC. 1796. The board of directors shall, at their regular meeting in September, or at any special meeting called thereafter for that purpose, divide their township into subdistricts, such as justice, equity, and the interests of the people require; and may make such alterations of the boundaries of subdistricts heretofore formed, as may be deemed necessary; and shall designate such subdistricts, and all subsequent alterations,

SEC. 1794. 1. The residence of the scholar, and not of the parent, determines his right to attend school. The parent may reside in one district, and the child in another. If the parent sends him into another district to remain for a limited period, he may attend school only on such terms as are prescribed by the board. S. L. Decisions, 53 and 130.

2. In determining whether a person is entitled to attendance free of tuition, the board may take any impartial method of deciding the question.

3. Parties may be required to satisfy the board that their residence is actual, before being admitted to free attendance. But the board may not compel any person to declare how long he intends to remain a resident of the district.

4. Any one aggrieved by the order of the board admitting, or refusing to admit, a scholar, has the remedy of appeal.

SEC. 1795. In order that scholars may attend in another subdistrict in their own township, it is necessary to have the consent of both subdirectors. As this matter is placed in the hands of the respective subdirectors, the board has no control, and the only remedy for refusal is such a redistricting, under section 1796, as will better accommodate all parties.

SEC. 1796. 1. While this section provides that boards may change subdistrict boundaries at the regular meeting in September, or at a special meeting called for that purpose, it must be understood that such change cannot be made so late as to prevent the notices of election from being given at least five days previous to the subdistrict elections, as required by section 1718. S. L. Decisions, 124.

2. It requires a vote of a majority of all the members of the board to make any change in the boundaries of subdistricts. Section 1738.

in a distinct and legible manner, upon a plat of the district provided for that purpose; and shall cause a written description of the same to be recorded in the district records, a copy of which shall be delivered by the secretary to the county treasurer, and also to the county auditor, who shall record the same in his office; provided that the boundaries of subdistricts shall conform to the lines of congressional divisions of land; and that the formation and alteration of subdistricts as contemplated in this section shall not take effect until the next subdistrict election thereafter, at which election a subdirector shall be elected for the new subdistrict.

SEC. 1797. In cases where, by reason of streams or other natural obstacles, any portion of the inhabitants of any school district cannot, in the opinion of the county superintendent, with reasonable facility, enjoy the advantages of any school in their township, the said county superintendent, with the consent of the board of directors of such district as may be affected thereby, may attach such part of said township to an adjoining township, and the order therefor shall be transmitted to the secretary of each district, and be by him recorded in his records, and the proper entry made on his plat of the district.

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3. It is especially important that the county auditor and treasurer be officially notified by the district secretary, whenever any changes are made in district boundaries, by the formation of independent districts and otherwise, to enable these officers to perform their duties in the levies of taxes, and the apportionment and disbursement of school funds.

4. By congressional divisions of land is meant those divisions authorized by congress in government surveys, of which the smallest is, in general, one-sixteenth of a section, or a tract of forty acres in a square form. Government lines, however, sometimes meander along streams and other bodies of water, and divisions of land are thus formed of less than forty acres. S. L. Decisions, 80.

SEC. 1797. 1. This section contains the only provision of law under which a subdistrict can be formed from parts of two or more civil townships. The law should be strictly complied with, or the proceedings will be invalid.

2. Such subdistricts can be formed only by concurrent action of the board of the district from which the territory is taken and the county superintendent. 62 Iowa, 616.

3. As the county superintendent has original concurrent jurisdiction, no appeal can be taken from the refusal of the board to give consent. From the order of the county superintendent an appeal may be taken to determine whether the law was fulfilled, but not for the purpose of controlling his discretion in any way, if the intent of the law was met. S. L. Decisions, 117.

4. The natural obstacle must be a large stream unbridged, an impassable slough, the entire absence of a public highway, or some such natural insurmountable difficulty.

5. Streams well bridged and distance are not natural obstacles in the contemplation of the law.

6. Subdistricts cannot be formed from portions of two counties.

SEC. 1798. (As amended by Chap. 111, Laws of 1880, and Chap. 160, Laws of 1882.) In all cases where territory has been, or may be, set into an adjoining county or township, or attached to any independent school district in any adjoining county or township, for school purposes, such territory may be restored by the concurrence of the respective boards of directors; but on the written application of two-thirds of the electors residing upon the territory within such township or independent district in which the school-house is not situated, the said boards shall restore the territory to the district to which it geographically belongs; provided however that no such restoration shall be made unless there are fifteen or more pupils between the ages of five and twenty-one years, actually residing upon said territory sought to be restored, and not until there has been a suitable school-house erected and completed, within the limits of said territory suitable for school purposes.

SEC. 1799. The boundary lines of a civil township shall not be changed by the board of supervisors of any county, so as to divide any school district by changing the boundary lines thereof, except when a majority of the voters of such district shall petition therefor; provided however that this shall not prevent the change of the boundary lines of any civil township, when such change is made by adopting the lines of congressional townships.

FORMATION OF INDEPENDENT DISTRICTS.

SECTION 1800. (As amended by Chap. 139, Laws of 1880.) Any city, town or village containing not less than two hundred inhabitants within

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SEC. 1798. 1. It will be noticed that two distinct and separate methods are provided by this section. 78 Iowa, 550.

2. When two-thirds petition, the remedy is not mandamus, but appeal from the refusal of the board last acting. 73 Iowa, 134.

3. The restoration may take effect at any time agreed upon, but if no agreement is made, it will take effect the following March. 59 Iowa, 109.

4. When the boundaries of districts are changed, the territory transferred carries with it a just proportion of all assets and liabilities of the district from which it is taken. 58 Iowa, 77.

SEC. 1799. 1. District township boundaries must conform to the boundaries of civil townships under the provisions of section 1713.

2. The boundaries of independent districts are not affected by the change of civil township boundaries.

3. The words school district in this section mean also subdistrict. Section 379, Code.

SEC. 1800. 1. The two hundred inhabitants must be contained within the limits of the town or village. 70 Iowa, 434. Additional territory should be given by the board in forming the new independent district. Usually, territory equivalent to about four government sections, will constitute a proper district.

2. An independent district cannot be formed from a city, town or village situated within an *independent* district, because no *district township* board can establish the boundaries, as provided by sections 1801 and 1805.

its limits, may be constituted a separate school district; and territory contiguous to such city, town or village, may be included with it as a part of said separate district, in the manner hereinafter provided. The village herein mentioned shall be understood to be a collection of inhabitants residing within the limits of a town plat, and not organized into a city or incorporated town.

SEC. 1801. At the written request of any ten legal voters residing in such city or town, the board of directors of the district township shall establish the boundaries of the contemplated school district, including such contiguous territory as may best subserve the convenience of the people for school purposes, and shall give at least ten days' previous notice of the time and place of meeting of the electors residing in said district, by posting written notices in at least five conspicuous places therein; at which meeting the said electors shall vote by ballot, for or against, a separate organization.

SEC. 1802. (As amended by Chap. 27, Laws of 1874, and Chap. 143, Laws of 1880.) Should a majority of votes be cast in favor of such separate organization, the board of directors of the district township, shall give similar notice of a meeting of the electors for the election of six directors. Two of these directors shall hold their office until the first

SEC. 1801. 1. The contemplated independent district must include all of the city, town or village, and may include as much contiguous territory as the board thinks proper. It is not limited by subdistrict lines, but may, if necessary, include a part or all of two or more subdistricts. S. L. Decisions, 113 and 133.

2. When the boundaries extend beyond the limits of a town or city, they must conform to lines of congressional divisions of land. Note 1 to section 1800.

3. The board of the district township in which a majority of the voters of the contemplated independent district reside, may establish the boundaries of said district without the concurrence of any other board, even when said territory is taken from two or more civil townships in the same or adjoining counties. Section 1805.

4. The notices of the election to determine the question of a separate organization should state clearly the boundaries of the proposed district.

5. All of the electors residing within the proposed limits must be permitted to vote on the question of separate organization. 17 Iowa, 85.

6. The president and secretary of the district township should act as chairman and secretary of this meeting, and as judges of election; in their absence a chairman and secretary should be chosen by the electors.

7. At the meeting to determine the question of separate organization the polls must remain open from 9 o'clock a. m. until 4 o'clock p. m. 34 Iowa, 306.

SEC. 1802. 1. The first board will enter upon the discharge of official duties as soon as qualified, and organize by electing a president, a secretary and a treasurer; the term of office of the president will expire on the third Monday in March following his election, of the secretary and treasurer on the third Monday in September after their election.

2. The secretary should immediately file with the county superintendent, auditor and treasurer, each, a certificate, showing the officers of the board, and

annual meeting after their election, and until their successors are elected and qualified; two until the second, and two until the third annual meeting thereafter; their respective terms of office to be determined by lot. The six directors shall constitute a board of directors for the district, and they shall, at their first regular meeting in each year, elect a president from their own number; and at their meeting on the third Monday of September in each year, a secretary and treasurer to be chosen outside of the board; provided that in all independent districts having a population of less than five hundred, there shall be three directors elected, who shall organize by electing a president from their own number, also a secretary, who may or may not be a member of the board, and a treasurer, who shall not be a member of the board; and provided further that in all independent districts already organized, the terms of office of such directors as may have been chosen previous to the taking effect of this section for two or three years, shall not be interfered with by its passage.

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their post office address, and should notify them of all subsequent changes made in the officers of the board. Section 1736 and note.

3. In all independent districts the president is chosen by the board from their own number on the third Monday in March. He has the right to vote on all questions coming before the board. Note 3 to section 1739.

4. The secretary and treasurer are elected on the third Monday in September. In districts containing over five hundred inhabitants, they must be chosen outside of the board. In districts containing less, the secretary may or may not be chosen from the board, but the treasurer must be chosen outside the board. If a member of the board, of course the secretary has a vote.

5. The secretary and treasurer have ten days in which to qualify. Section 1721.

6. Where the law requires a certain duty to be performed by the board upon a fixed day, as for instance the election of a secretary and a treasurer, an adjournment of the meeting to another fixed date will allow the transaction of the business directed to be done on the day of the regular meeting. 75 Iowa, 196. Note 7 to section 1721.

7. In case the board fails to elect an officer on the day fixed by law, or at an adjourned meeting the day of which was fixed at adjournment, the incumbent holds over, and should qualify anew. Section 690, Code.

8. If the treasurer continues in office by reason of failure to elect a successor, his bond should be renewed and he should produce and account for the funds in his hands, and the statement of such settlement should be indorsed on his new bond. Note 7 to section 1747.

9. All proceedings connected with the organization of the district should be recorded by the secretaries in the records of the districts, so that the facts concerning its formation and organization may be readily obtained, in case the validity of the proceedings should ever be questioned.

10. The last official census will, as a general rule, be sufficiently accurate to determine questions relating to the population, but in case of doubt, the actual existing facts govern, which may be ascertained by any reliable means. 77 Iowa, 676.

SEC. 1803. Said meeting for the first election of directors shall organize by appointing a president and secretary, who shall act as judges of the election, and issue a certificate of election to the persons elected.

SEC. 1804. The organization of such independent district shall be completed, on or before the first day of August of the year in which said organization is attempted, and when such organization is thus completed, all taxes levied by the board of directors of the district township of which the independent district formed a part, in that year, shall be void so far as the property within the limits of the independent district is concerned; and the board of directors of such independent district shall levy all necessary taxes for school purposes, as provided by law, for that year, at a meeting called for that purpose, at any time before the third Monday of August of that year, which shall be certified to the board of supervisors, on or before the first Monday of September, and said board of supervisors shall levy said tax at the time, and in the manner, that school taxes are required to be levied in other districts.

SEC. 1805. In case such district is formed of parts of two or more civil townships in the same or adjoining counties, the duty of giving the notice shall devolve upon the board of directors of the township in which a majority of the legal voters of the contemplated district reside.

SEC. 1806. Said district may have as many schools, and be divided into such wards and other subdivisions for school purposes, as the board of directors may deem proper; and shall be governed by the laws enacted for the regulation of district townships, so far as the same may be applicable.

INDEPENDENT DISTRICT ELECTION.

SECTION 1807. (As amended by Chap. 131, Laws of 1886.) It shall be lawful for the electors of any independent district, at the annual meeting of such district, to vote a tax, not exceeding ten mills on the dollar, in any one year, on the taxable property of such district, as the meeting may deem sufficient for the purchase of grounds and the con-

SEC. 1804. 1. This section is construed to mean that the organization contemplated must be made between January first and the first of August.

2. When a new independent district is organized as provided by this section, the board has authority to determine and certify all necessary taxes, for school purposes, for that year, including school-house taxes.

SEC. 1805. An independent district composed of territory from two or more counties, belongs, for school purposes, to the county wherein most of the scholars reside. A certificate to teach should be issued by the superintendent of the county to which it thus belongs, which certificate is valid for any school in the district.

SEC. 1807. 1. The matters referred to may be presented at a time when the largest number is present, and voted upon *viva voce*. Or ballots may be prepared so that all those voting for members of the board may vote on one or more of these questions also. Note 15 to section 1717.

struction of the necessary school-houses for the use of such independent district, and for the payment of any debts contracted for the erection of such school-houses, and for procuring a library and apparatus for the use of the schools of such independent district. And said electors may direct the sale or other disposition to be made of any school-house or the site thereof, or any part of such site, and of such other property, real and personal, as may belong to the independent district, and direct the manner in which the proceeds arising therefrom shall be applied.

Chapter 67, Laws of 1874.

VOTING ON SCHOOL TAXES.

Section 1. All school districts lying in two adjoining counties shall have the right to vote mills, instead of specific sums, for school purposes.

Chapter 8, Laws of 1880.

SEPARATE POLLING PLACES.

Section 1. Independent school districts having a population of not less than fifteen thousand inhabitants, shall be divided into not less than three, nor more than six election precincts, in each of which a poll shall be held at a convenient place, to be appointed by the board of directors, for the reception of the ballots of the electors residing in such precinct at said election.

Sec. 2. The board of directors shall provide for the submission of all questions relating to the powers reserved to the electors under section 1807 of the Code, which questions shall be decided by ballot, returns to be made on questions submitted as hereinafter provided.

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2. The power to vote school-house taxes belongs exclusively to the electors. The amount deemed necessary, and not a certain number of mills, should be voted. The sums necessary for the teachers' and contingent funds are determined by the board. 41 Iowa, 180.

3. The electors frequently assume to exercise powers not granted them by the law. They have only such powers as are specifically named in the law. Note 5 to section 1717.

4. Independent districts of 15,000 and upwards are governed by chapter 8, laws of 1880.

5. School elections are exempted from the operation of chapter 161, laws of 1886, known as the registry law, and of chapter 33, laws of 1892, the latest election law.

6. In all cases, it would be well for the ballot to state the term voted for, in connection with the name of the person.

7. The electors may not limit or restrict the board to the adoption of a course of study including only such branches as the electors may name. Nor may the electors direct that a particular branch, or certain studies, shall not be taught. It is the province of the board to decide what branches besides those in a teacher's examination and those named by the electors, shall be included in the course of study and taught in the schools of the district.

SEC. 3. A register of the electors residing in each precinct shall be prepared by the board of directors from the register of the electors of any city, town or township which is in whole or in part included within such independent school district; and for that purpose a copy of such register of electors shall be furnished by the clerk of each such city, town or township to the board of directors. Said board shall, in each year before the annual election for directors, revise and correct such school election registers by comparison thereof with the last register of elections for such cities, towns and townships. And the register provided for by this section shall have the same force and effect at elections held under this act, and in respect to the reception of votes at said elections, as the register of elections has by law at general elections.

SEC. 4. Notice of every election under this act shall be given in each district in which the same is to be held, by the secretary thereof, by posting up the same in three public places in such district, and by publication in a newspaper published therein for two weeks preceding such election; such notice shall also state the respective election precincts, and the polling place in each precinct.

SEC. 5. The board of directors shall appoint one of their own number and another elector of the district to act as judges of election, and a clerk for each polling place, who shall be sworn as provided by section 609 of the Code in case of general elections. The polls shall be open from 9 o'clock A. M. to 6 o'clock P. M. If either of the judges, or clerk, fail to attend, his place may be filled by the others by appointing an elector attending in his place, and if all fail to attend in time, or refuse to serve or be sworn, the electors present shall choose two judges and a clerk from the electors attending. A ballot-box and the necessary poll-book shall be provided by the board of directors for each precinct, and the election shall be conducted in the same manner, and under the same rules and regulations, so far as applicable, as are provided by chapter 3 of title 5 of the Code, for general elections.

SEC. 6. The judges of election and clerk in each precinct shall canvass the vote therein, and shall as soon as possible, make out, sign and return to the secretary of the district a certificate showing the whole number of votes cast in such precinct, and the number of votes in favor of each person voted for, and questions submitted. The board of directors shall meet on the next Monday after the election and canvass the returns, and ascertain the result of the election. The whole number of votes cast, and the number in favor of each person voted for, shall be entered in their record, and the persons respectively receiving the highest two numbers of votes shall be declared elected, and all questions submitted receiving a majority of the votes cast shall be recorded as carried. The secretary shall issue to each person so elected a certificate of his election.

SEC. 7. All acts and parts of acts inconsistent with this act are hereby repealed.

CHAPTER 72, LAWS OF 1886.

USE OF PUBLIC SQUARES FOR SCHOOL PURPOSES.

SECTION 1. It shall be lawful for the people of any incorporated town located wholly within an independent school district in which is situated a public square or plat of ground, deeded or dedicated to the said town or the public, by the proprietor of the town, or of any addition thereof, to transfer or re-dedicate such plat or square, to the purpose of a public school-house lot, to be used either for the erection thereon of a public school-house, or as school grounds, in connection with such school-house.

SEC. 2. The manner of procedure to effect the change or transfer of the purpose for which such lot or square shall be used, as is authorized in section 1, of this act, shall be as follows: When a plat or lot of the character described in section 1, of this act, is located in such incorporated town, and one-half of the resident voters of such town, according to the last census thereof, national or state, shall petition the mayor and town council of such town, asking said city authorities to submit to the voters of the town at a general or special election the question whether or not such public square, lot or plat shall be transferred, dedicated and used for the purposes of a public school-house lot, for the use of the independent district, in which the same is situated, said mayor and town council shall submit the question to the voters of the town, in accordance with the prayer of said petitioners after giving ten days' notice thereof, by written or printed notices, in which the proposition submitted, shall be clearly set forth, and signed by said mayor, three of which notices shall be posted in public and conspicuous places in the town, and one shall be published in the last two issues, preceding such election in a weekly newspaper published in the town, or if there be no such newspaper published in the town then in the weekly newspaper published elsewhere in the county, having the largest circulation in said town. Such notice shall state the manner of voting, which shall be by ballot, and substantially as follows: The ballot shall contain in print, ink or pencil the words "For transferring lot or block or square (as the case may be, describing it) to the purposes of a public school-house lot," or "Against transferring lot or block or square (as the case may be, describing it) to the purposes of a school-house lot." And such election shall be held as per notice given and be conducted as ordinary town elections are, under the supervision of the town authorities, who shall canvass the vote as by law provided in other cases. If it shall appear that two-thirds or more, of all the legal votes cast at such election, for and against the proposition submitted, have been cast in favor of the transfer of such lot or block or square, to

the purposes of a public school-house lot, then such transfer shall be held to have been completed, and the lot or block or square may be appropriated and used for the purposes so indicated by said vote, and shall be no longer held for any other purpose. If less than two-thirds of the votes cast at such election are found to be in favor of the transfer then it shall be held that the proposition failed and no transfer shall be effected.

SEC. 1807½. (Chap. 21, Laws of 1892.) When an independent district, by fire or otherwise, has been deprived of a school building, and the board of directors of such district, by the use of the powers in them vested, are unable to provide for the continuance of the school for which such building has been used; then such board of directors shall call a meeting of such district. The manner of calling such meeting, and the powers of such meeting, shall be as follows: The board of directors shall cause to be posted in three public places in such district, at least ten days prior to the designated time of holding such meeting, written notices of such meeting, in which shall be stated the time and place of such meeting and the object or purpose for which the same is called. The powers of such meeting shall be the same as are prescribed in section 1807 hereof, except those powers which are set forth after the word "district" in the sixth line thereof.

SEC. 1808. (As amended by Chap. 7, Laws of 1880.) The annual meeting of all independent districts shall be held on the second Monday in March, for the transaction of the business of the district, and for the election by ballot of two directors, as the successors of the two whose term expires, who shall continue in office for three years; and the president, secretary, and one of the directors then in office, shall act as judges of the election, and shall issue certificates of election to the persons elected for the ensuing term; provided, that in all independent districts,

SEC. 1808. 1. All vacancies which have occurred in the board, during the year, should also be filled by election, and the ballot should designate the vacancy to be filled; the persons so elected hold for the remainder of the unexpired term; all persons appointed to fill vacancies in office hold until the following election. Constitution of Iowa, article 11, section 6; also section 785, Code.

2. Members elect enter upon their duties at the time of the regular meeting of the board, on the third Monday in March. For time and manner of choosing officers of the board, see sections 1721, 1790, 1802, 1806, and notes.

3. There is no provision of law by which judges at school elections may receive pay.

4. When the population of an independent district which has had six directors, falls below five hundred, one director shall be chosen each year. 77 Iowa, 676 and 79 Iowa, 466. Thus the board will consist of five members, four members, and thereafter of three members.

5. This section clearly provides how a tie vote shall be decided. And if more than two persons have each an equal number of votes, the same provisions will apply. Note 9 to section 1719.

having a population of less than five hundred, there shall be elected, annually, one director, who shall continue in office for three years. In cases of a tie vote in the election of director, or directors, the secretary shall notify them to appear at the regular meeting of the board on the third Monday in March, to determine their election by lot before one or more members of the board elected, and the certificate of election shall be given accordingly. Should either party fail to appear or take part in the lot, the secretary shall draw for him.

CHANGES IN FORM OF DISTRICT.

SECTION 1809. When an independent district has been formed out of a civil township, or townships, as herein contemplated, the remainder of such township, or of each of such townships, as the case may be, shall constitute a district township as provided in section seventeen hundred and thirteen of this chapter, and the boundaries between such district township and independent district may be changed, or the independent district abandoned, at any time, with the concurrence of the respective boards of directors.

CHAPTER 133, LAWS OF 1878.

(As amended by Chapter 131, Laws of 1880.)

SUBDIVISION OF INDEPENDENT DISTRICTS.

SECTION 1. Any independent school district, organized under any of the laws of this state, may subdivide, for the purpose of forming two or

SEC. 1809. 1. The change of boundaries authorized by this section may be made at any time of year.

2. If the boundary between an independent district and district township is the line of the civil township, it cannot be changed; but if the independent district includes a portion of a civil township the remainder of which constitutes a district township, the boundary between the districts may be changed.

3. Chapter 62, laws of 1888, provides for change of boundaries between adjoining independent districts in the same civil township.

4. Where a change of boundaries between districts is desired, and one of the boards acts favorably to the change, a petition may be presented to the other board to concur in that action, although it formerly may have refused to grant a similar petition. From the action of the latter board upon the request, an appeal may be taken.

5. No appeal can be taken from an action of the board taking the initiatory step, while it requires the concurrence of another board to complete the action. The concurrence or refusal of the second board is the order from which an appeal may be taken. S. L. Decisions, 61, 120, 129 and 139.

6. When an appeal is taken from the proper board, the county superintendent must affirm the action of one board or the other, but cannot himself modify the action of the board acting first. S. L. Decisions, 139.

7. Territory transferred from one district to another carries with it an equitable proportion of the assets and liabilities of the district from which it is taken, the district accepting it becoming responsible for such liabilities.

more independent school districts, or have territory detached to be annexed with other territory, in the formation of an independent district or districts, and it shall be the duty of the board of directors of said independent district to establish the boundaries of the districts so formed, the districts so formed not to contain less than four government sections of land, each; this limitation shall not apply when, by reason of a river or other obstacle, a considerable number of pupils will be accommodated by the formation of a district containing less than four sections, or where there is a city, town or village within said territory, of not less than one hundred inhabitants, and in such cases, the independent district so formed shall not contain less than two government sections of land, such subdivision to be effected in the manner provided for in sections 2, 3 and 4 of this chapter; provided that where either of the districts so proposed to be formed contains less than four government sections, it shall require a majority of the votes, of each of the proposed districts, to authorize such subdivision.

SEC. 2. At the written request of one-third of the legal voters residing in any independent school district, the board of directors of said independent district shall call a meeting of the qualified electors of the independent district, at the usual place of holding their meeting, by giving at least ten days' notice thereof, by posting three notices in the independent district sought to be divided, and by publication in a newspaper, if one be published in the independent district, at which meeting the electors shall vote by ballot for or against such subdivision.

SEC. 3. Should a majority of the votes be cast in favor of such subdivision, the board or boards of directors shall call a meeting in each independent district so subdivided or formed as aforesaid, for the purpose of electing by ballot three directors, who shall hold their offices, one, two,

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CHAPTER 133, LAWS OF 1878.

SECTION 1. 1. The provisions of this section as amended apply to all independent districts organized under the laws of this state, and civil township lines are not a bar.

2. The amount of territory can not be less than an equivalent of four government sections, unless the provisions of the latter part of this section apply.

3. An independent district containing territory amounting to less than eight government sections may be divided into two independent districts, if an unbridged stream or other obstacle prevents a considerable number of scholars from attending school, or if one portion contains a village of not less than one hundred inhabitants. The district so formed must contain territory amounting to not less than two government sections, and a majority of the votes cast in each contemplated district must be cast for the division.

SEC. 2. When the required number of electors petition for such division the board is compelled to call the election, but the organization can not be completed between August and January.

and three years, respectively; the length of their respective terms to be determined by lot; and but one director shall be chosen annually thereafter, who shall hold his office for three years.

SEC. 4. At the meeting of the electors of each independent school district, as provided in the last section, they shall also determine by ballot the name to be given to their district, and each independent district, when so organized, shall be a body corporate, and the name so chosen shall be its corporate name; provided that the board of directors of any district, organized under the provisions of this act, may change its name if any other district in the township shall have chosen the same name.

SEC. 5. Independent districts, organized under the provisions of this act, shall be governed by the laws relating to independent districts.

CHAPTER 118, LAWS OF 1882.

INCLUDING ALL OF CITY, WITHIN INDEPENDENT DISTRICT.

SECTION 1. All the territory of an incorporated city or town, whether included within the original incorporation, or afterwards attached thereto, in accordance with the provisions of law, shall be or become a part of the independent district, or districts, of said city or town.

SEC. 2. When boundaries are changed by the taking effect of this act, the respective boards of directors shall make an equitable settlement of the then existing assets and liabilities of their districts, as provided for by section 1715 of the Code.

CHAPTER 61, LAWS OF 1888.

FORMATION OF INDEPENDENT DISTRICTS.

SECTION 1. The subdistricts of a district township may be constituted independent districts in the manner hereinafter provided.

SEC. 2. At the written request of one-third of the legal voters in each subdistrict of any district township, the board of directors shall call a meeting of the qualified electors of each subdistrict by giving at least thirty days' notice thereof by posting three written notices in each subdistrict in the township, at which meeting the electors shall vote by ballot for or against independent district organization.

SEC. 5. When the division has been completed, a settlement of assets and liabilities must be made, in conformity with section 1715.

CHAPTER 61, LAWS OF 1888.

SECTION 2. The vote upon the change of form may be taken at any time of year, but the organization cannot be completed between August and January. Section 1804.

SEC. 3. If a majority of the votes cast in each subdistrict shall be favorable to such independent organization then each subdistrict shall become an independent district.

SEC. 4. The board of directors of the old district township so voting shall then call a meeting in each independent district for the election of three or more directors, as may be required by law, and the organization of the said independent district shall be completed and governed in the same manner as other and similar independent districts.

CHAPTER 62, LAWS OF 1888.

BOUNDARIES OF INDEPENDENT DISTRICTS.

SECTION 1. The boundary lines of contiguous independent districts within the same civil township, may be changed by concurrent action of the respective boards of directors at their regular meeting in September, or at special meetings thereafter called for that purpose; provided that the district so formed, from which territory has been detached, shall not contain less than four government sections of land; and provided further that the boundary lines of said district shall conform to the lines of congressional divisions of land.

SEC. 1810. In case an independent district embraces a part or the whole of a civil township which has no separate district township organization, upon the written application of two-thirds of the electors residing upon the territory of such independent district, and within such civil township, to the board of directors, they shall set off such territory, whether provided with school-houses or not, to be organized as a district township in the manner provided for such organization when a new civil township is formed.

SEC. 1811. (As amended by Chap. 63, Laws of 1888.) Independent districts located contiguous to each other, may unite and form one and the same independent district, in the manner following: At the written request of any ten legal voters residing in each of said independent districts, or, should there not be ten legal voters in one of such districts, then at the written request of the majority of such voters, their respective boards of directors shall require their secretary to give at least ten days' notice of the time and place for a meeting of the electors residing

SEC. 3. 1. Unless each and every subdistrict in the district township gives a majority vote favoring the change in form, the township remains a district township.

2. A single subdistrict may be organized as an independent district only when a village, town, or city is included. Section 1800.

SEC. 4. When the new boards are organized, they should meet as soon as possible, and make settlement of assets and liabilities, as directed by section 1715. S. L. Decisions, 110.

in such districts, by posting written notices in at least five public places in each of said districts, at which meetings the said electors shall vote by ballot for or against a consolidated organization of said independent districts; and if a majority of the votes cast at the election in each district, shall be in favor of uniting said districts, then the secretaries shall give similar notice of a meeting of the electors as provided for, by the law, for the organization of independent districts. The independent district thus consolidated shall be completed, and its directors governed by the same provisions of the law which apply to other independent districts. Where from the courses of Iowa rivers, and the contour of the adjoining territory, the proper school facilities cannot be given to the school children of each territory by forming school districts from the territory in any one county, independent school districts may be formed from the contiguous territory in adjoining counties. Any independent school district heretofore formed under this section, where there were less than ten legal voters residing therein at the time of the consolidation, is hereby legalized and made valid provided that two-thirds of the legal voters then residing in such independent district petition for such consolidation.

SEC. 1812. Where, under the school laws of the state heretofore in force, for the convenience and accommodation of the people, school districts were formed of portions of two counties of territory lying contiguous to each other, at the written request of five legal voters residing in portions of said territory in each county, the board of directors of the district township to which such territory belongs, having a majority of the legal voters, shall fix the boundaries of an independent school district composed of such sections of land, or portions thereof, as may be described in the petition therefor, and shall give at least ten days' notice of the submission of the question of the formation of said independent district, at a special election for said purpose, specifying the boundaries of the district, the time and place of meeting of the electors for such election, at which meeting the electors in the contemplated district shall vote by ballot for or against the separate organization. Should a majority of the votes be cast in favor of such separate organization, the said board of directors shall proceed by ballot to elect officers in the manner provided by law, and organize such independent district.

SEC. 1813. The boards of directors of the several independent school districts are hereby required to publish, two weeks before the annual

SEC. 1813. 1. This statement should show the total receipts and expenditures for each fund, followed by an estimate of the amount required for each fund, to maintain the schools for the ensuing year.

2. The detailed and specific statement of the receipts and disbursements of all funds expended, should be sufficiently itemized to show the amount received from each separate source, also the amount expended for each particular purpose.

school election in such district, by publication in one or more newspapers, if any are published in such district, or by posting up in writing, in not less than three conspicuous places in such independent district, a detailed and specific statement of the receipts and disbursements of all funds expended for school and building purposes, for the year preceeding such annual election. And the said boards of directors shall also, at the same time, publish in detail, an estimate of the several amounts which, in the judgment of such board, are necessary to maintain the schools in such district, for the next succeeding school year; and failure to comply with the provisions of this section, shall make each director liable to a penalty of ten dollars.

SEC. 1814. Township districts may be consolidated and organized as independent districts, in the following manner: Whenever the board of directors of any existing district township shall deem the same advisable, and also whenever requested to do so by a petition signed by one-third of the voters of the district township, the board shall submit to the voters of said district township, at a regular election, or one called for the purpose, the question of consolidation, at which election the voters of the district township shall vote for, or against consolidation. If a majority of votes shall be in favor of such consolidated organization,

3. This statement is for the information of the electors, but they should not vote upon the amount of tax to be levied for contingent and teachers' fund, as these matters are determined by the board. Section 1777.

4. The board must have the statement published at least once in a newspaper, if one is printed in the district.

5. The fee of the publisher for printing the statement is fixed by section 3832, Code.

6. In preparing the annual statement for publication, minute details of all the items need not be given. This would render it uselessly troublesome to prepare, and expensive to publish. Such general results and classified items as will enable the electors fully to comprehend the proceedings of the board, are all that the law requires. The statistics of the schools may be added if the board thinks proper, but the law does not require it.

SEC. 1814. 1. Any district township may organize into a single independent district, embracing the whole township. The vote may be ordered at any regular or special meeting of the board, and submitted to the electors at any time of the year, but if carried in the affirmative, does not take effect until the second Monday in March following, when the directors are elected.

2. By adopting the independent district system, there will be but six directors in any case, and but three where the township contains less than five hundred inhabitants. At the first election the whole number is elected, and divided by lot into three classes, after which one or two directors only will be elected annually.

3. When independent districts have been formed from the subdistricts of a township, they may also, under the provisions of this section, unite into one independent district. In this case the petition of one-third of the electors in the township should be presented to the township trustees, whose duty it is to call the meeting to vote on the question of consolidation.

such district township shall organize on the second Monday of March following, as an independent district; provided that in townships which have been divided into independent districts, the duties in this section devolving on the board of directors, shall be performed by the trustees of the township, to whom the petition shall in such cases be addressed; and provided further that nothing in this section shall be construed to affect independent districts composed wholly or mainly of cities or incorporated towns. Independent districts may, in like manner, change their boundaries so as to form any number of districts less than the number of districts existing at the time such change is asked for, and such changes shall be specified in the notices for a vote thereon.

SEC. 1815. (As amended by Chap. 155, Laws of 1876.) The independent districts of a civil township may be constituted a district township in the manner hereinafter provided.

SEC. 1816. (As amended by Chap. 155, Laws of 1876.) At the written request of one-third of the legal voters residing in any civil township, which is divided into independent districts, the township trustees shall call a meeting of the qualified electors of such civil township, at the usual place of holding the township election, by giving at least ten days' notice thereof, by posting three written notices in each independent district in the township, and by publication in a newspaper, if one be published in such township, at which meeting the said electors shall vote by ballot for or against a district township organization.

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4. The plan of making each civil township an independent district, governed by a board chosen from the township at large, is, in many respects, the best system yet devised. It reduces the number of school officers, provides for gradual changes in the board, secures uniform taxation for the support of schools throughout the township, encourages the establishment of graded schools for advanced scholars, and tends to the selection of teachers according to the qualifications and work required in each single case.

SEC. 1815. 1. The electors of any civil township which has adopted the independent district organization, may vote upon the question of returning to the district township organization, under sections 1815–1820, as amended.

2. A single independent district, embracing the whole of the civil township, may be formed by section 1814, a system possessing many advantages over any other, in simplicity of organization, permanency of officers, uniformity of taxation, and economy of management. Note 4 to section 1814.

SEC. 1816. 1. The petition provided for in this section may be presented to the trustees and the vote ordered at any time of the year.

3. The meeting held to determine the question of district township organization, is a township meeting; if the vote is in the affirmative, each and every independent district in the township, except those organized as city or town districts, becomes a subdistrict of the district township.

3. The township trustees may act as judges of this election, in their absence the electors assembled may choose a chairman and one or two secretaries to act as judges. The polls should be kept open from 9 a. m. to 4 p. m. Note 7 to section 1801.

SEC. 1817. (As amended by Chap. 155, Laws of 1876.) If a majority of the votes cast at such election be in favor of such district township organization, each independent district shall become a subdistrict of the district township, and shall organize as such subdistrict on the first Monday in March following, by the election of a subdirector.

SEC. 1818. (As amended by Chap. 155, Laws of 1876.) Each subdistrict so formed shall hold a meeting on the first Monday in March, for the election of a subdirector; five days' notice of which meeting shall be given by the secretary of the old independent district, by posting written notices in three public places in each district, which notices shall state the hour and place of meeting.

SEC. 1819. (As amended by Chap. 155, Laws of 1876.) District townships organized under the provisions of the preceding four sections, shall be governed and treated in all respects as other district townships; provided that nothing in this act shall be construed to affect independent districts composed, wholly or mainly, of cities or incorporated towns.

SEC. 1820. (As amended by Chap. 155, Laws of 1876.) When any district township is organized under the provisions of the preceding five sections, the subdirectors shall organize as a board of directors, on the

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SEC. 1817. 1. The board of each independent district will continue to act until the third Monday in March following the election, at which time a full statement of all assets and liabilities of the district should be reported to the board of the district township when organized.

2. The first board of a district township formed from a township organized as a single independent district, will consist of three subdirectors, elected by the whole township. Section 1720. If this board chooses to subdivide the district, it may do so. Section 1796. Or it may allow the district township to remain a single subdistrict, a plan having very many excellent advantages.

SEC. 1818. For powers and duties of this meeting, see sections 1718 and 1719 and notes.

SEC. 1819. The district township meeting should be held on the second Monday in March, for the purpose of voting the necessary school-house taxes, as provided in section 1717.

SEC. 1820. 1. Between the time of the election provided for in section 1816, and the third Monday in March following, the boards of the several independent districts have authority to perform all necessary acts relating to the affairs of their districts, but they cannot incur any indebtedness, nor make any contracts, except such as may be necessary to maintain the usual schools of their districts.

2. Upon the organization of the district township, the secretary should file with the county auditor and treasurer a certified plat of the district, and report to the county superintendent, auditor, and treasurer, the name and address of each officer of the new board.

3. The district township receives all the assets and assumes all the liabilities of the several independent districts. In case an independent district has issued bonds, or otherwise incurred an indebtedness, for the erection of a school-house, the board of the district township has authority to apportion school-house taxes for the payment of such indebtedness, from time to time, as justice and equity may require. Note 5 to section 1715.

third Monday in March, and make an equitable settlement of the then existing assets and liabilities of the several independent districts.

BONDS.

SECTION 1821. (As amended by Chap. 121, Laws of 1876.) Independent school districts shall have the power and authority to borrow money, for the purpose of redeeming outstanding bonds, and erecting and completing school-houses, by issuing negotiable bonds of the independent district, to run any period not exceeding ten years, drawing a rate of interest not to exceed ten per centum per annum, which interest may be paid semi-annually; which said indebtedness shall be binding and obligatory on the independent district for the use of which said loan shall be made; but no district shall permit a greater outstanding indebtedness than an amount equal to five per centum of the last assessed value of the property of the district.

SEC. 1822. (As amended by Chap. 59, Laws of 1880.) The directors of any independent district, may submit to the voters of their district, at the annual or a special meeting, the question of issuing bonds as contemplated by the preceding section, giving the same notice of such meeting as is now required by law to be given for the election of officers of such districts, and the amount proposed to be raised by the sale of such bonds, which question shall be voted upon by the electors, and if a majority of all the votes cast on that question be in favor of such loan, then said board shall issue bonds to the amount voted, in denominations of not less than twenty-five dollars, nor exceeding one thousand dollars,

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SEC. 1821. 1. Bonds voted under the provisions of this section may be issued and sold as the necessities of the independent district require, but cannot be made available for the purchase of a school-house site.

2. If actually necessary, the board may issue an order on the school-house fund for the purchase of a site, which order may be indorsed by the treasurer if there are no funds, and draw interest.

3. No independent district may incur a bonded indebtedness to an amount, in the aggregate, exceeding five per cent on the value of its taxable property. Constitution, article 11, section 3.

4. The levy of taxes is not considered an outstanding indebtedness, in the sense of this section. The limit for levy of taxes is fixed by section 1780.

5. As indicating the valuation of the district, the tax lists may not be taken into account until after the levy of the taxes in September. 70 Iowa, 230.

SEC. 1822. 1. In order that the bonds may be negotiated to the best advantage possible, great pains should be taken to follow the law carefully in every respect.

2. The cost of the blank bonds and the expense of negotiating the bonds, should be paid from the contingent fund.

3. Although the bonds are payable at the pleasure of the district before due, we think those holding the bonds, or their agents, should have some previous notice, say thirty days, of the intention to call in the bonds.

due not more than ten years after date, and payable at the pleasure of the district at any time before due, which said bonds shall be given in the name of the independent district issuing them, and shall be signed by the president of the board, and attested by the secretary, and delivered to the treasurer, taking his receipt therefor, who shall negotiate said bonds at not less than their par value, and countersign the same when negotiated. The treasurer shall stand charged upon his official bond with all bonds that may be delivered to him; but any bond or bonds not negotiated may be returned by him to the board.

Chapter 132, Laws of 1878.

ISSUANCE OF BONDS TO FUND JUDGMENT INDEBTEDNESS.

Section 1. Any school district against which judgments have been rendered prior to the passage of this act, and which judgments remain unsatisfied, may, for the purpose of paying off such judgments and funding such judgment indebtedness, issue upon the resolution of the board of directors of the district, the negotiable bonds of such district, running not more than ten years, and bearing a rate of interest not exceeding ten per centum per annum, payable semi-annually, which bonds shall be signed by the president of the district, and countersigned by the secretary, and shall not be disposed of for less than their par value, nor for any other purpose than that provided for by this act, and such bonds shall be binding and obligatory upon the district.

Sec. 2. It shall be the duty of the board of directors of any district which shall issue bonds under this act, to provide for the payment of the same by the levy of tax therefor, in addition to the other taxes provided by law, and they are hereby required to levy such an amount each year as shall be sufficient to meet the interest on such bonds promptly as it accrues.

Sec. 3. The bonds issued under this act shall be in the name of the district and in substantially the same form as is by law provided for county bonds; shall be payable at the pleasure of the district; shall be registered in the office of the county auditor; shall be numbered consecutively and redeemed in the order of their issuance.

Chapter 51, Laws of 1880.

ENABLING DISTRICTS TO ISSUE BONDS TO FUND JUDGMENT INDEBTEDNESS.

Section 1. Any school district or district township against which judgments have been rendered, prior to the passage of this act, and which such judgments remain unsatisfied, may, for the purpose of paying off such judgment indebtedness, issue negotiable bonds, of such district township, upon a resolution of the board of directors of the district

township, running not more than ten years, and bearing a rate of interest not exceeding eight per cent per annum, payable semi-annually, which bonds shall be signed by the president of the district and countersigned by the secretary, and shall not be disposed of for less than their par value, nor for any other purpose than that provided by this act, and such bonds shall be binding and obligatory upon the district township.

SEC. 2. It shall be the duty of the board of directors of any district township which issues bonds under this act, to provide for the payment of the same by the levy of tax therefor, in addition to the other taxes provided by law; and they are hereby required to levy such an amount each year as shall be sufficient to meet the interest on such bonds promptly as it accrues.

SEC. 3. The bonds issued under this act shall be in the name of the district township and in substantially the same form as is by law provided for county bonds; shall be payable at the pleasure of the district township; shall be registered in the office of the county auditor; shall be numbered consecutively and redeemed in the order of their issuance.

CHAPTER 132, LAWS OF 1880.

(As amended by Chap. 95, Laws of 1886.)

AUTHORIZING DISTRICTS TO FUND BONDED OR JUDGMENT INDEBTEDNESS.

SECTION 1. Any independent school district, or district township, now or hereafter having a bonded or judgment indebtedness outstanding, is hereby authorized to issue negotiable bonds at any rate of interest not exceeding seven per cent per annum, payable semi-annually, for the purpose of funding said indebtedness; said bonds to be issued upon a resolution of the board of directors of said district; provided that said resolution shall not be valid unless adopted by a two-thirds vote of said directors.

SEC. 2. The treasurer of such district is hereby authorized to sell the bonds provided for in this act, at not less than their par value, and apply the proceeds thereof to the payment of the outstanding bonded or judgment indebtedness of the district, or he may exchange such bonds for outstanding bonds, par for par; but the bonds hereby authorized shall be issued for no other purpose than the funding of outstanding bonded or judgment indebtedness. The actual cost of the engraving and printing of such bonds, shall be paid out of the contingent fund of such district.

SEC. 3. Said bonds shall run not more than ten years, and be payable at the pleasure of the district after five years from the date of their issue; provided that in order to stop interest on them the treasurer shall give the owner of said bonds ninety days' written notice of the readiness of the district to pay, and the amount it desires to pay; said notice to be

directed to the post office address of the owner of the bonds; provided further that the treasurer shall keep a record of the parties to whom he sell the bonds, and their post office address, and notice sent to the address as shown by said record, shall be sufficient.

SEC. 4. Said bonds to be in denominations of not less than one hundred dollars and not more than one thousand dollars; and said bonds shall be given in the name of the independent district, or district township, and signed by the president, and countersigned by the secretary thereof; and the principal and interest may be made payable wherever the board of directors may by resolution determine.

SEC. 5. When said bonds are delivered to the treasurer to be negotiated, the president shall take his receipt therefor, and the treasurer shall stand charged on his official bond with the amount of the bonds so delivered to him.

SEC. 6. The tax, for the payment of the principal and interest of said bonds, shall be raised as provided in section 1823, chapter 9, title 12 of the Code, provided that if the district shall fail or neglect to so levy said tax the board of supervisors of the county in which said district is located, shall, upon the application of the owner of said bonds, levy said tax.

SEC. 7. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 1823. If the electors of an independent school district which has issued bonds, shall at the annual meeting in March for any year, fail to vote sufficient school-house tax to raise a sum equal to the interest on the outstanding bonds which will accrue during the then coming year, and such portion of the principal as will liquidate and pay off said bonds at maturity, then it shall be lawful for the board of such district, to vote a sufficient rate on the taxable property of the district, to pay such interest and such proportionate portion of the principal as will pay said bonds in full, by the time of their maturity, and shall cause the same to be certified and collected, the same as other school taxes.

SEC. 1824. All school orders shall draw lawful interest, after having been presented to the treasurer of the district, and not paid for want of funds, which fact shall be indorsed upon the order by the treasurer.

SEC. 1823. To pay bonds, a board may certify in excess of ten mills, if necessary. 69 Iowa, 612.

SEC. 1824. The board may not authorize the payment of interest to exceed six per cent. 51 Iowa, 102. Interest can be paid on an order only from the date of its presentation to the treasurer, and indorsement.

SCHOOL-HOUSE SITES.

SECTION 1825. It shall be lawful for any district township or independent district to take and hold, under the provisions contained in this chapter, so much real estate as may be necessary for the location and construction of a school-house, and convenient use of the school; provided that the real estate so taken, otherwise than by the consent of the owner or owners, shall not exceed one acre.

SEC. 1826. The site so taken must be on some public highway, at least forty rods from any residence, the owner whereof objects to its being placed nearer, and not in any orchard, garden or public park. But this section shall not apply to any incorporated town.

SEC. 1827. (As amended by Chapter 134, Laws of 1886.) If the owner of any such real estate refuse or neglect to grant the site on his

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SEC. 1825. 1. The board should try if possible to procure a site by purchase.

2. A site of less than one acre may be enlarged to an acre.

3. The acre contemplated in this section means exclusive of highway.

4. Property encumbered, occupied as a homestead, or belonging to minor heirs, may be taken under the provisions of this section.

5. If the district cannot establish its claim to the school-house site, owing to the loss of the deed, or for other reason, and the owner refuses to sell or lease the site, the district may avail itself of the provisions of this and the following sections and secure a site not to exceed one acre.

6. When purchased, the provisions of this section do not apply. The district stands in the same relation to the public and to individuals, in this respect, as do other corporations, and may purchase and convey real estate accordingly. S. L. Decisions, 96.

SEC. 1826. 1. All sites taken under these sections, must be located on a public road, and at least forty rods from any residence, the owner whereof objects to its being placed nearer, except in incorporated towns.

2. When a site is sought to be condemned, the distance of forty rods mentioned in this section, is measured from the nearest part of the residence to the nearest part of the site, in a straight line.

3. Boards may rebuild on sites without consent of owners of residences within forty rods.

4. Under the Iowa statute of limitations, ten years' use of a highway by the public, under a claim of right, will bar the owner of the soil. 19 Iowa, 123.

5. If the public, with the knowledge of the owner of land, has claimed and continuously exercised the right of using the same for a public highway, for a period equal to that fixed by the statute for the limitation of real actions, a complete right to the highway thereby becomes established against the owner, unless it appears that such use was by favor, leave or mistake. 22 Iowa, 457.

SEC. 1827. 1. If personal service cannot be made, as provided by sections 2601–2610, Code, the notice must be published, four consecutive weeks, previous to the appraisement, in a newspaper. Sections 2618–2620, Code. Forms 44, 45, 46, 47 and 48.

2. The appraisers are entitled to two dollars for each day's service, and ten cents per mile from their residence to the location of the property appraised. Sections 3811–3813, Code.

premises, or if such owner can not be found, the county superintendent of the county in which said real estate may be situated, shall upon application of either party, appoint three disinterested persons of said county, unless a smaller number is agreed upon by the parties, who shall, after taking an oath to faithfully and impartially discharge the duties imposed on them by this chapter, inspect said real estate, and assess the damages which said owner will sustain, by appropriation of his land for use of said house and school, said county superintendent giving to the owner of such real estate the same notice as is required for the commencement of a suit at law, in the district court, of the time of such assessment of damage, and make a report in writing to the county superintendent of said county, giving the amount of damages, description of land, and exact location, who shall file and preserve the same in his office. If said board shall, at any time before they enter upon said land, for the purpose of building said house, deposit with the county treasurer, for the use of said owner, the sum assessed as aforesaid, they shall be thereby authorized to build such house, and maintain the right to said premises; provided that either party may have the right to appeal from said assessment of damages, to the district court of the county where such real estate is situated, within twenty days after receiving notice that such assessment is made, which appeal shall be final; but such appeal shall not delay the prosecution of work upon said house, if said board shall pay or deposit with the county treasurer, the amount so assessed by such appraisers, and in no case shall said board be liable for costs on appeal, unless the owner of said real estate shall be adjudged a greater amount of damages than was awarded by said appraisers. The board shall in all cases pay costs of the first assessment.

SEC. 1828. The title acquired by said school districts in and to said real property shall be for school purposes only, and in case the same

3. When the owner of land taken under section 1827 is unknown, or cannot be found, it is not necessary to print the report of appraisement, or to attempt other notice to said owner than the printed notice required by this section. It is sufficient for the county superintendent to send a certified copy to the board.

4. If the board has deposited with the county treasurer the amount assessed by the appraisers in accordance with this section, we think the courts would hold that the district had come into possession of the site.

5. The money deposited with the county treasurer should be held for the benefit of the owner of the fee, and not for the mortgagee.

6. Since the receipt of the treasurer for the money deposited with him for the owner of the land, may be the only evidence of title, such a receipt should have a full description of the property, containing the proviso of note (*b*) of form 19, and should be recorded by the county recorder.

SEC. 1828. 1. No deed or other instrument from the owner is required to authorize the district to occupy the land for school purposes. The proceedings should be recorded in full by the district secretary.

should cease to be used for said purpose, for the space of two years, then the title shall revert to the owner of the fee, upon the repayment by him of the principal amount paid for said land, by said districts, without interest, together with the value of any improvements thereon erected by said districts; provided that during the time said site is used for school purposes, the owners of the fee shall not injure or remove the timber standing and growing thereon.

APPEALS.

SECTION 1829. Any person aggrieved by any decision or order of the district board of directors, in matter of law or of fact, may, within thirty days after the rendition of such decision, or the making of such order, appeal therefrom to the county superintendent of the proper county.

SEC. 1830. The basis of the proceeding shall be an affidavit, filed by the party aggrieved with the county superintendent, within the time for taking the appeal.

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2. In case the land desired for a school site is under mortgage, the district may receive from the owner the lease of a portion not to exceed one acre, to be held by the district as long as used for school purposes, and when no longer so used, to revert to the owner, as provided by this section.

SEC. 1829. 1. The right of appeal is limited to persons aggrieved or injuriously affected by the decision or order complained of. S. L. Decisions, 22, 58 and 80.

2. After the expiration of thirty days, the county superintendent cannot entertain an appeal.

3. In computing time the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. Section 23, Code.

4. When the act complained of is of a discretionary character, the action of the board should be sustained, unless it is clearly shown that the board violated law, abused its discretion, or acted with manifest injustice. S. L. Decisions, 22, 70, 108 and 138.

5. In certain cases an aggrieved party has a choice of legal remedies. 56 Iowa, 476.

6. To compel the performance of an official duty, appeal sometimes consumes valuable time. Mandamus is often a more speedy as well as a better remedy. S. L. Decisions, 100.

7. When a board violates a mandatory requirement, application by an interested party to a court for a writ to compel the board to act as directed by the statute is the more speedy and preferable remedy. 44 Iowa, 432; 50 Iowa, 648, and 71 Iowa, 632. S. L. Decisions, 100, 128 and 137.

8. To correct an illegal action of the board, certiorari, and not appeal, is the remedy. 55 Iowa, 215. S. L. Decisions, 55.

9. No appeal can be taken from the action of the board taking the initiatory step, while it requires the concurrence of another board to complete the action. The concurrence or refusal of the second board is the order from which an appeal may be taken. Note 5 to section 1809.

SEC. 1830. 1. An affidavit is a written declaration, sworn to before some officer authorized to administer oaths. Section 3689, Code.

SEC. 1831. The affidavit shall set forth the errors complained of in a plain and concise manner.

SEC. 1832. The county superintendent shall, within five days after the filing of such affidavit in his office, notify the secretary of the proper district, in writing, of the taking of such appeal. And the latter shall, within ten days after being thus notified, file in the office of the county superintendent, a complete transcript of the record and proceedings relating to the decision complained of, which transcript shall be certified to be correct by the secretary.

SEC. 1833. After the filing of the transcript aforesaid in his office, he shall notify in writing all persons adversely interested of the time and place where the matter of the appeal will be heard by him.

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2. A county superintendent can have no jurisdiction of an appeal case until the affidavit has been filed. S. L. Decisions, 27.

3. A notice of intention to file an affidavit, a verbal complaint, or a petition, is not sufficient to give the county superintendent jurisdiction in appeal cases. Form 49. S. L. Decisions, 37.

SEC. 1831. 1. The affidavit should contain a statement of the decision complained of and its date, a statement of facts showing that the appellant has an interest in the decision and is injuriously affected by it, and the assignment of errors. Form 49.

2. This affidavit being the first paper filed, care should be taken that the case is properly entitled, and this title should be preserved throughout the further progress of the appeal. The date of filing should be indorsed upon the affidavit by the superintendent.

3. The filing of an affidavit of appeal has the effect of arresting all action by the board in relation to the matter appealed from.

4. During the pendency of an appeal all matters must remain in *statu quo*, and this can be enforced by writ of injunction.

5. No opinion relating to matters involved in an appeal will be given to interested parties by this department.

SEC. 1832. 1. The notice should describe the decision or order appealed from, so that it may be identified, and should require the district secretary to file the transcript with the superintendent within the time specified. The notice may be served personally or sent by mail. Form 50.

2. The secretary shall make and forward a transcript or copy of the record of all actions of the board relating to the decision or order appealed from, also of all petitions, remonstrances, plats, and other papers pertaining thereto. The original papers must be preserved with the district records. Form 51.

3. A failure to file the transcript will not affect the proceedings in any other way than to cause delay. The secretary will take the risk of censure by a court for failure to attend to his official duty. S. L. Decisions, 99.

SEC. 1833. 1. The time to elapse between the filing of the transcript and the hearing of the appeal is not fixed by the statute. This is left to the county superintendent to determine.

2. Notice of the time and place of hearing should be given to the appellant, to the secretary of the board, and to any other persons known to be directly interested. The notices may be served personally or sent by mail. Form 52.

SEC. 1834. It the time thus fixed for hearing, he shall hear testimony for either party, and for that purpose may administer oaths if necessary, and he shall make such decision as may be just and equitable, which shall be final, unless appealed from as hereinafter provided.

SEC. 1835. An appeal may be taken from the decision of the county superintendent to the superintendent of public instruction, in the same manner as provided in this chapter for taking appeals from the district

SEC. 1834. 1. While the superintendent is not a court in the strict sense of the term, he is required to administer oaths, to hear testimony on both sides, to receive depositions, and to render a just and equitable decision.

2. While mere technicalities should not be permitted to prevent the attainment of justice, it is not inappropriate that as to evidence and practice the superintendent should be governed by many of the rules which ordinarily obtain in courts.

3. The county superintendent may not guarantee witness fees, issue subpœnas, nor give any judgment for costs or other expenses.

4. While the county superintendent may not compel the attendance of witnesses at the trial of an appeal, he may order depositions to be taken, in accordance with sections 3692-3696, Code, and thus secure the required testimony.

5. In case of disturbance or interruption during the trial of an appeal before a county superintendent, as he is not invested with judicial power, he has only the ordinary remedy of complaint to the proper authorities, as provided for in section 4069, Code.

6. The docket or minutes of the superintendent should commence by noting the filing of the affidavit. He will afterward, as the acts transpire, record the sending of the notice of appeal to the district secretary, the filing of the transcript, the sending of notices of the hearing, and any adjournment of the case that may be granted. At the trial he will carefully note down the names of all parties appearing, and their post office address, and whether they appear for or against the appeal, also, the filing of all papers and names of witnesses, and in whose behalf such papers or witnesses are introduced. The decision of the superintendent will form an appropriate close of his minutes. Forms 50, 51, 52 and 53. S. L. Decisions, 22.

7. All testimony must be given under oath, and the substance reduced to writing at the time by the county superintendent. It is recommended that a summary of what each witness testifies be made, read to the witness, and signed by him. It is of the first importance that the record of the testimony be full and accurate, as the decision of the county superintendent, also of the superintendent of public instruction, in case the appeal is carried up, must be based upon the record of evidence introduced. This testimony should be preserved with the other papers of the case.

SEC. 1835. 1. Appeals to the superintendent of public instruction are conducted in the same manner and governed by the same rules, so far as applicable, as appeals to county superintendents. The basis of the appeal must be an affidavit filed in the office of the superintendent of public instruction, within thirty days from the date of the decision appealed from. For form and contents of the affidavit see notes to sections 1830-31.

2. Upon the filing of an affidavit the superintendent of public instruction will notify the county superintendent to forward a transcript of the papers in the case within thirty days. The original papers must be preserved on file in the county superintendent's office.

board to the county superintendent, as nearly as applicable, except that he shall give thirty days' notice of the appeal to the county superintendent, and the like notice shall be given the adverse party. And the decision, when made, shall be final.

SEC. 1836. Nothing in this chapter shall be so construed as to authorize either the county or state superintendent to render a judgment for money, neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved.

---

3. Upon the filing of the transcript, thirty days' notice of the time set for hearing will be given to all parties interested. This time of thirty days may be diminished on the written agreement of both parties. Form 53.

4. It is suggested that when it is possible, the transcript, or at least the testimony, be sent in work from a typewriter. See also preface to School Law Decisions of 1892.

5. At the hearing, parties interested may appear personally or by attorney, and argue their cases orally if they desire, or they may send arguments in writing, or if possible, in typewriting.

6. The record of the case in the office of the county superintendent, which is a public record and should be open as such to examination by parties interested, will furnish all needed data, where access to the transcript sent up is inconvenient.

7. The superintendent of public instruction will not hear original testimony in cases submitted to him. S. L. Decisions, 126.

8. Any person aggrieved by an action of the county superintendent in refusing to grant a certificate or in revoking the same, may apply to him for a rehearing, the proceedings to correspond as nearly as possible to the proceedings in the case of an appeal from a board of directors. If any party is aggrieved by the result of this investigation, an appeal may be taken therefrom to the superintendent of public instruction.

9. A party, in whose favor an appeal is decided, has the remedy of a writ of mandamus from a court of law to enforce the decision of appeal. 69 Iowa, 533.

SEC. 1836. Payment for postage in advance will be required with the affidavit. It is impossible to tell what amount of postage will be needed in each case, and one dollar will be required, to cover all needed postage. If the dollar does not accompany the affidavit, the filing will necessarily be delayed until the amount is received.

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BLANK FORMS.

NUMBER 1.

Form for Proceedings of District Township Meeting.

[Section 1717.]

March.....189..

The electors of the district township of....., in the county of....., and state of Iowa, assembled at.... .....pursuant to previous notice. The meeting was called to order by the president at....o'clock.....m. The secretary being absent,.....was appointed secretary.

The order of business was stated by the president.

On motion of....., a tax of.....dollars was voted for school-house purposes.

.....moved that a tax of eight hundred dollars be voted for the purpose of erecting a school-house in subdistrict No...

.....moved to amend by striking out "eight hundred dollars" and inserting "one thousand dollars," which motion was carried and the motion as amended was decided in the affirmative.

.....moved to transfer.....dollars of unused school-house fund to teachers' (contingent) fund. Carried.

.....moved that the various powers conferred by law on the district meeting, which may be delegated to the board of directors, be and the same are hereby so delegated. After discussion the vote was taken and the motion was adopted.

On motion of..... , the meeting adjourned.

....., *Chairman.*

....., *Secretary.*

NOTE.—It is essential that the secretary make a full and accurate record of the proceedings of the district township meeting, which should be submitted to the president for his approval at the close of the meeting, and afterwards recorded in the district records, or otherwise preserved.

These records, together with all certificates of the action of any subdistrict in relation to voting school-house taxes, must be submitted by the secretary, who is the proper custodian of the records, to the board, at the meeting held on the following Monday, to form the basis of its action in apportioning and certifying school-house taxes to the board of supervisors.

NUMBER 2.

Form of Notice for Annual Meeting in Subdistricts.

[Section 1718.]

Notice is hereby given, that a meeting of the qualified electors of subdistrict No....., of the district township of....., in the county of....., and state of Iowa, will be held at....., on the first Monday in March, 189.., at...o'clock, for the election of one subdirector, and the transaction of such other business as may legally come before it.

Dated....., 189..

....., *Subdirector of Subdistrict No....*

NOTES.—*(a)* In case there is no subdirector, the above notice must be given by the secretary of the district township. It must be posted five days previous to the meeting, in at least three public places in the subdistrict. The notice should designate the hour of meeting, which cannot be earlier than 9 o'clock a. m. Section 1789.

(b) When an organized district township is left without officers, or without a quorum, the above notice for a special election should be posted by the township trustees, in at least three public places in each subdistrict, changing the time of holding the election to suit the circumstances of the case. Section 1714.

NUMBER 3.

Form of Proceedings of Annual Subdistrict Meeting.

[Sections 1718, 1719, 1720.]

March....., 189..

The electors of subdistrict No....., of the district township of....., in the county of....., and state of Iowa, met pursuant to previous notice.

.....was appointed chairman, and.....secretary of the meeting.

On motion of....., the meeting proceeded to the election by ballot of one subdirector.

The chairman announced the result of the ballot to be as follows:

20 votes were cast for A B; 15 votes for C D; and 10 votes for E F; upon which A B was declared duly elected subdirector for the ensuing year.

.....moved that a tax of.....dollars be voted for the erection of a school-house in this subdistrict.

The motion was lost.

On motion of.....the meeting adjourned.

....., *Chairman.*

....., *Secretary.*

NOTES.—*(a)* If the electors desire to hold a caucus, it should be done before the subdistrict meeting is called to order. Only one ballot can be had for the election of subdirector, and a plurality will elect.

(b) The amount voted by the subdistrict must be certified to the next regular district township meeting.

(c) To avoid the levy of taxes upon the subdistrict, the district township may simply be requested, by a vote of the electors of the subdistrict, to build them a school-house, without asking for a definite amount of money.

NUMBER 4.

Form for Certificate of Election of Subdirector.

[Section 1719.]

We hereby certify that, at the annual meeting of subdistrict No ....., of the district township of....., in the county of..... ....., and state of Iowa, held on the first Monday in March, 189.., ..., was duly elected subdirector for said subdistrict.

....., *Chairman.*

....., *Secretary.*

NOTES.—*(a)* This certificate, slightly varied, will answer in case of the election of a subdirector at a special meeting called by the township trustees. In both cases, it should be presented by the subdirector elect to the board of the district township, and filed with the president of said district.

(b) In case of a tie vote, the fact should be certified in a similar manner to that given in the above form, by the officers of the meeting.

NUMBER 5.

Form for Certificate of the Tax Voted by Subdistrict Meeting.

[Section 1718, 1778.]

To.....,

Secretary of the board of directors of the district township of.....

I hereby certify that the electors of subdistrict No.....,of the district township of....., in the county of.....,and state of Iowa, at the annual meeting, held on the first Monday in March, 189.., voted a tax of.....dollars for the erection of a school-house in said subdistrict.

....., *Subdirector.*

NOTE.—This certificate may be made either by the subdirector or by the chairman and secretary of the subdistrict meeting.

NUMBER 6.

Proposals for the Erection (or Repair) of a School-house.

[Section 1723.]

Notice is hereby given that the proposals for the erection *(or repair)* of a school-house in subdistrict No....., in the district township of....., in the county of....., will be received by the undersigned, at his office in.....(where plans and specifications may be seen), until 1 o'clock p. m.,....., 189.., at which time the contract will be awarded to the lowest responsible bidder. The board reserve the right to reject any or all bids.

.....
Secretary of the Board of Directors.

NUMBER 7.

Form of Contract for Building a School-house.

[Section 1723.]

Contract made and entered into between....., of the county of....., and state of Iowa, and... ....., in behalf of the district township of... ....., in the county of....., and state of Iowa, and his successors in office.

In consideration of the sum of..... .....dollars, to be paid as hereinafter specified, the said.....hereby agrees to build a school-house, and to furnish the material therefor, according to the plans and specifications for the erection of said house hereto appended, at.....
.....
.....
in said district township. The said house is to be built of the best material, in a substantial, workmanlike manner, and to be completed and delivered to the said ....., or his successors in office, free from any lien for work done or material furnished, on or before the .....day of..... .., 189... And in case the said house is not finished by the time herein specified, the said..... .....shall forfeit and pay to the said....., or his successors in office, for the use of said district township, the sum of .....dollars, and shall also be liable for all damages that may result to said district township in consequence of said failure.

The said..... . ....., or his successors in office, in behalf of said district township, hereby agrees to pay the said.....the sum of.....dollars when the foundation of said house is finished: and the further sum of.....dollars when the walls are up and ready for the roof; and the remaining sum of.....dollars when the said house is finished and delivered as herein stipulated.

It is further agreed that this contract shall not be sublet, transferred, or assigned, without the consent of both parties.

Witness our hands this.....day of....., 189..

.....,
Contractor.

... .,
President.

This is to certify that the foregoing contract was approved by the board of directors of the district township of ....., in the county of ....., and state of Iowa, this ..... day of ....., 189..

.....,
President.

....., *Secretary.*

NOTES.—(*a*) The law requires the board to make all contracts necessary to carry out any vote of the district, and the president of the district to sign all contracts made by the board. Section 1739. Contracts must, in all cases, be made according to the instructions and directions of the board, and after being made they should be approved by the board before any work is done.

(*b*) In building a school-house, it is important to secure plans of the building, with full specifications as to its dimensions, style of architecture, number and size of windows and doors, quality of materials to be used, what kind of roof, number of coats of paint, of what material the foundation shall be constructed, its depth below and its height above the surface of the ground, the number and style of chimneys and flues, the provisions for ventilation, the number of coats of plastering and style of finish, and all other items in detail that may be deemed necessary. The plans and specifications should be attached to the contract, and the whole filed with the secretary of the district township.

NUMBER 8.

Form of Bond for Performance of Contract.

[Section 1723.]

Know all Men by these Presents: That we, ..., as principal, and ..... and ..... as sureties, of the county of ....., and state of Iowa, are held and firmly bound unto the district township of ....., in the county of ....., and state of Iowa, in the penal sum of ..... dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators and assigns, jointly, severally and firmly by these presents.

The condition of the above obligation is such that, whereas the said .... has this day entered into a written contract with ..... , as president of the board of directors of the district township of ....., in the county of ....., and state of Iowa, and his successors in office, for the erection and completion of a school-house in said subdistrict, by the .... day of ....., 189.., according to the plans and specifications for the construction of said house appended to said contract.

Now, therefore, if the said ..... shall faithfully and fully comply with all the stipulations of said contract, then this obligation shall be void, otherwise remain in full force and virtue in law.

In testimony whereof we have hereunto subscribed our names this ..... day of ....., 189..

....., *Principal.*

....., ..., ..., *Sureties.*

NUMBER 9.

Bond of President.

[Chapter 24, Laws of 1890.]

Know all Men by these Presents:

That we, ..., of the county of....., as principal, and..... as sureties, are held and firmly bound unto the county of....., and state of Iowa, in the penal sum of FIVE HUNDRED DOLLARS, for the payment of which we bind ourselves, our heirs, executors and administrators, firmly by these presents.

The Condition of the Foregoing Obligation is, That, whereas, the above named ... ., as president of the board of directors of the ...., is required by section 1 of chapter 24, laws of 1890, to take charge of, care for, and account for, all text-books and supplies, and to return all moneys received from the sale of such books and supplies to the contingent fund of said district; now, if the said..... shall promptly pay over to the treasurer of the district all money which may come into his hands from the sale of books and supplies, and shall account in full at any time for all books and supplies coming into his hands, and at the close of his term of office shall deliver to any person or officer authorized to receive the same, all books and supplies unsold, and make full settlement as required by law, then this bond to be void, otherwise in full force.

Signed this.....day of....., 189..

.....
.....
.....

NOTE.—At least two sureties are required, who must be resident freeholders of this state, and each of whom must make the affidavit as surety, required by section 249, Code. Both the principal and sureties must qualify before some one empowered to administer oaths.

NUMBER 10.

Notice to Publishers of School Text-books.

[Chapter 24, Laws of 1890.]

Notice is hereby given that in accordance with section 5, chapter 24, laws of 1890, bids will be received up to.....of the..... day of ....., 189.., by..... at ....., for the following text-books and supplies for the use of the schools of said.....

Approximate Number Needed for First Supply.

Readers, First to Fifth, inclusive.....
Arithmetics, two books.....
Speller.....
Geographies, two books.....
United States History.....
Grammar.....
Language Lessons.....
Copy books, 1–5 inclusive.....
Physiology.....
.....
.....

Approximate number of pupils in attendance upon the schools of said.....
....., during the year 189..,
.....

Samples of all text-books included in any bid must be deposited and remain in the office of the county auditor, in accordance with section 7 of said act.

The board reserve the right to reject any or all bids, or any part thereof.

....., *President.*
....., *Secretary.*
....., 189..

NUMBER 11.

Bond of Contractor.

[Chapter 24, Laws of 1890.]

Know all Men by these Presents: That we, ...,
of..... as principal, and.....
.....
as sureties, are held and firmly bound unto.....
.....in the penal sum of.....
.....
to be paid to the said.....
for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

The conditions of the above obligation are such that if the above bounden .....shall well and truly fulfill and comply with all the obligations of their contract made on the.....day of ....., 189.., with the aforesaid..... ..... providing for the furnishing of school text-books at prices and on conditions set forth in their said contract, a copy of which said contract is hereto attached and made a part thereof, then this obligation to be void; otherwise to remain in full force and effect.

In testimony whereof we have hereunto subscribed our names this..... day of....., 189..

....., *Principal*

....., ..., *Sureties.*

NOTE—At least two sureties are required, who must be resident freeholders of this state, and each of whom must make this affidavit as surety, required by section 249, Code. Both the principal and sureties must qualify before some one empowered to administer oaths.

NUMBER 12.

Petition for County Uniformity.

[Chapter 24, Laws of 1890.]

To....., County Superintendent, ...county, Iowa.

In accordance with section 8, chapter 24, laws of 1890, we, the undersigned, holding the office of school director, ask for the adoption of a uniform series of text-books in the schools of said county, and that you take steps to submit the question to the electors of the county, at the annual school meeting in March, as provided for in section 9, of said act.

NAMES.	DISTRICT OR SUBDISTRICT NAME OR NUMBER.	TOWNSHIP.
.....	.....	.....
.....	.....	.....
.....	.....	.....

....., 189..

NUMBER 13.

Form for Certificate of Appointment of School Officers.

[Section 1730.]

.....,189..

To..... ....:

You are hereby notified that, at a meeting of the board of directors of the district township of ....., in the county of..... ....., and state of Iowa, held on the ..... day of....., 189.., you were duly appointed (*here name the office*) in and for said district township, to fill the vacancy occasioned by the (*here state the cause of the vacancy*) of..... ....

.....,
Secretary of the Board of Directors.

NOTE—For the appointment of subdirector, insert in the above form the words *subdistrict number* ..... *of* immediately after the word *for*.

NUMBER 14.

Form for Bond of Secretary or Treasurer.

[Section 1731.]

Know all Men by these Presents: That I, ..., as principal, and ..... and ..... as sureties of the district township of ....., in the county of....., and state of Iowa, are held and firmly bound unto the district township of ... . , in the said county and state, in the penal sum of .....dollars, to be paid to the said district township of ....., for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents.

The condition of the above obligation is such that if the above bounden ....., shall well and truly fulfill the duties of secretary (or treasurer) in the district township of....., and county of..... and state of Iowa, to the best of his ability, according to law, then the above obligation to be void, otherwise to remain in full force and action in law.

In testimony whereof we have hereunto subscribed our name this ..... day of ....., 189..

....,
Principal.

. ...,
.....,
Sureties.

STATE OF IOWA, } ss.
..... county. }

I, ..., do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of Iowa, and that I will faithfully and impartially discharge the duties of secretary (or treasurer) of the district township of ....., in the county of ...., and state of Iowa, according to law and as provided by the condition of my bond above written.

.....

Subscribed and sworn to before me by the above named ..... this ..... day of ...., 189..

In testimony whereof witness my hand and official seal.

....,

[SEAL.] *Notary Public.*

STATE OF IOWA, } ss.
.....county. }

I, ..., being duly sworn, depose and say that I am a resident freeholder of the state of Iowa, and am worth the sum of ....dollars beyond the sum of my debts, and have property liable to execution in this state equal to the sum of..... dollars.

.....

Subscribed and sworn to before me by the above named..... this.....day of....., 189..

In testimony whereof witness my hand and official seal.

.....,

[SEAL.] *Notary Public.*

NOTES.—*(a)* See section 1731, notes.

(b) The aggregate amount to which the sureties are required to qualify, is double the amount of the bond required. Section 249, Code.

NUMBER 15.

Form of Certificate for Election of the Officers of the Board, to the County Superintendent, Auditor, and Treasurer.

[Section 1736.]

I hereby certify that at a meeting of the board of directors of the district township of....., held on the..... .....day of ...., 189.., the following named officers were elected and have duly qualified according to law:

....., to the office of....., P. O. Address.....

....., to the office of....., P. O. Address.....

Dated at....., 189..

.....,

Secretary.

NOTE.—All the officers of the board, in addition to the oath which they may have taken as members, must take the oath of office as prescribed by section 5, article 11, of the constitution.

NUMBER 16.

Form of Draft on the County Treasury.

[Sections 1739, 1785.]

To....., *County Treasurer:*

Pay to....., treasurer of the district township of....., in the county of....., and state of Iowa, ...dollars school-house fund,..... dollars contingent fund, and.....dollars teachers' fund, being the amount of taxes collected and due this district, for the quarter ending on the first Monday of....., as shown by your notice of....., 189..

....., *President.*

....., *Secretary.*

NOTE.—Whenever a draft is drawn on the county treasury, it is the duty of the secretary to charge the district treasurer with the amount named in the draft, keeping a separate account with each fund. Section 1782.

NUMBER 17.

Form of Order on District Treasury.

[Section 1739.]

$..... ....., 189..

To....., *treasurer of the district township of*.....

Pay to....., or order, the sum of.....dollars from the (*here state the fund*) fund for (*here state the object for which drawn*).

....., *President.*

....., *Secretary.*

NOTE.—No order shall be drawn on the district treasury, until the claim for which it is drawn has been audited and allowed. Section 1733.

All orders drawn on the district treasury should be registered by the secretary as per form 20.

NUMBER 18.

Form of Lease.

[Section 1739.]

Know all Men by these Presents; That ...., of the county of .... and state of Iowa, for the consideration hereinafter mentioned, does hereby lease unto ....., president of the board of directors of the district township of ....., in the county of ....., and state of Iowa, or his successor in office, for the use of said district township for school purposes, the following described premises, situated in the county and state aforesaid, to-wit: (*Here describe the house and lot or parcel of ground*) together with all the privileges thereto belonging, for the term of ..... from the ..... day of ....., 189..

The said .... president as aforesaid, or his successor in office, hereby agrees to pay the said .... for the use of said premises, the ..... rate of ..... dollars to be paid at the expiration of this lease.

In testimony whereof we have hereunto subscribed our names this ..... day of ....., 189..

Signed in duplicate.

.....

....

President.

NOTE.—As a matter of safety, the above lease should be executed in duplicate, one to be held by the secretary of the board, and the other by the lessor. The lease should be approved by the board, as in case of a contract, and should be filed with the secretary.

NUMBER 19.

Form of Deed.

[Section 1739.]

Know all Men by these Presents: That we, ..., and ....., h....., of the county of ..... and state of Iowa, in consideration of the sum of ..... dollars in hand paid, do hereby sell and convey unto the district township of....., in the county of ...., and state of Iowa, the following described premises, situated in the county of ....., and state of Iowa, to-wit: (*Here describe the premises.*)

And we do hereby covenant with the said district township that we are lawfully seized of said premises; that they are free from incumbrance; that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant

and defend the title to the said premises against the lawful claims of all persons whomsoever.

....
.....

Signed this.....day of ...., 189..

STATE OF IOWA, }
.....county. } ss.

On this.... .....day of....., 189.., before me, a notary public in and for said county, personally came..... and....., h....., personally to me known to be the identical persons whose names are affixed to the above deed, for the purposes therein expressed.

Witness my hand and notarial seal this.....day of....., 189..

[L. S.]

....., *Notary Public.*

NOTES.—*(a)* In purchasing the grounds for school-house purposes, the president should require an abstract of title and satisfy himself that the property is free from incumbrance. Let the property in all cases be conveyed to the district in its corporate name. The deed should be recorded and afterwards filed with the president.

(b) In case of the donation of school-house site, the following reversionary clause may be appended to the deed: *Provided, that if, for the space of two consecutive years said premises shall cease to be used for school purposes, the same shall revert to the original donor; his heirs or assigns, without legal hinderance or expense.*

(c) Since, by section 1827, the receipt of the treasurer for the money deposited with him, for the owner of the land, may be the only evidence of title, such receipt should have a full description of the property, contain the proviso of note *(b)* of this form with this addition: *upon the repayment of the principal amount paid by the district, without interest, together with the value of any improvements thereon made by the district,* and the receipt should be recorded by the county recorder.

NUMBER 20.

Form of Order Register of Secretary and Treasurer.

[Section 1741.]

No.	DATE.	IN WHOSE FAVOR DRAWN.	FOR WHAT PURPOSE.	School-house fund. Amount.	Contingent fund. Amount.	Teachers' fund. Amount.
1	April 7, 189....	John Smith.....	Teaching school.....	$	$	$45.00
2	April 7, 189....	A. J. Adams.....	Rep. on school-house..	5.00		
3	April 7, 189....	Joel B. Young.....	Fuel.....		5.00	
4	May 10, 189....	Thos. Harrison....	Erection of S.-house...	125.00		
5	May 14, 189 ...	Sarah Johnson....	Teaching school.....			63.74

NOTE.—The law requires both the secretary and treasurer to keep a register of all orders drawn on the district treasury, containing a record of each item enumerated in the above form.

Whenever orders are drawn, the secretary should register them and furnish the treasurer with a transcript of the same to place upon his register.

Whenever partial payment is made, the treasurer should indorse the payment on the order and take a receipt for the amount paid. When paid in full, the order should, in all cases, be indorsed by the person presenting it, and left with the treasurer. It is then a voucher for the amount paid.

NUMBER 21.

Form of Notice of District Meeting.

[Section 1742.]

Notice is hereby given to the qualified electors of the.....district .....of....., in the county of....., and state of Iowa, that the annual meeting of said district will be held at..... ....., on the second Monday in March, 189.., at....o'clock .. m., for the transaction of such business as may legally come before it.

....., *Secretary.*

...., 189..

NOTES.—(*a*) The above notice must be posted in five different conspicuous places in the district and a copy of the same furnished to the teacher of each school in session to be read to the pupils thereof. In independent districts, insert immediately after the word *for*, in the concluding part of the notice, the words *the election of officers and* in accordance with the provisions of sections 1807, 1808, and section 4, chapter 8, laws of 1880.

(*b*) The same notice, slightly changed, may be given for the extra meetings provided for in sections 1717½, 1807½, and 1822, changing the time of holding the election to suit the circumstances of the case.

NUMBER 22.

[Section 1745.]

Report of the Secretary of the.....District.....
of....., for the Year Ending September...., 189..

DISTRICTS.	SCHOOLS.			TEACHERS AND PUPILS.								GENERAL.					
No. of subdistrict or name of independent district.	No. ungraded.	No. of rooms in graded schools.	No. of months' school since September of last year.	Males. / Females. — No. employed.		Males. / Females. — Average compensation per month.		Males. / Females. — No. of persons between the ages of 5 and 21 years.		Total No. of different scholars registered in the school since last September.	Average daily attendance in each school.	Average cost of tuition per month for each pupil.	No. of school-houses.	Value of school-houses.	Value of apparatus.	No. of volumes in library.	No. of trees set out on grounds and in thrifty condition.	Is the law requiring effects of stimulants and narcotics to be taught, fully complied with?
.....	....	..	....	....	....	$	$	....	....	....	....	$	....	$	$	....	....	.....
.....	....	..	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	.....
.....	....	..	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	.....
.....	....	..	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	.....
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....	....	..	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	.....
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... .	....	..	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	.....
.....	....	..	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	.....
Totals..	....	..	....	....	....	*	*	....	....	*	*	*	....	*	*	....	....	.....

* Leave these totals blank.

STATISTICS OF BLIND, DEAF AND DUMB, AND FEEBLE-MINDED.

NAME.	AGE.	NATURE OF DEFECT.	NAME OF PARENT.	P. O. ADDRESS.

I hereby certify that the foregoing report is correct.

.....post office, September....., 189..

....., *Secretary.*

NOTES.—*(a)* At the regular meeting in September, call the attention of your board to section 690, Code, which directs it to settle in full with the treasurer, and require him to account for and produce all funds and property under his control. The fact that the treasurer has made a complete settlement, and that he is in possession of the funds, should be indorsed on the new bond. This will furnish the legal proof that the treasurer has the funds in his possession.

(b) Two or more terms taught in the same school-house, the same year, constitute but one school.

(c) Express all fractions decimally; omit cents in the valuation of school-houses and apparatus.

(d) To find *the average daily attendance in the district*, divide the sum of the total attendance in days, as shown by the register of the teacher or teachers, by the number of days the school has been taught.

(e) To find *the average cost of tuition per month for each pupil*, divide the total amount paid teachers by the number of months, and this quotient by the average daily attendance.

(f) The average compensation per month averages between winter and summer schools, or of all the teachers of the same grade employed in a given district.

(g) Secretaries must file their reports with the county superintendent immediately after the meeting of the board, on the third Monday in September.

NUMBER 23.

Form for the Treasurers' Account with the Teachers' Fund.

[Sections 1747, 1748.]

....., TREASURER, *in account with Teachers' Fund.* DR.

Sept. 28, 189..	To cash received of County Treasurer, semi-annual apportionment	$ 270.00
Oct. 5, 189..	To cash received of County Treasurer, district tax	75.00
Jan. 4, 189..	To cash received of County Treasurer, district tax	150.00
April 5, 189..	To cash received of County Treasurer, district tax	197.00
April 5, 189..	To cash received of County Treasurer, semi-annual apportionment	135.00
July 5, 189..	To cash received of County Treasurer, district tax	100.00

....., TREASURER, *in account with Teachers' Fund.* CR.

Oct. 13, 189..	By cash paid James Hogan, on order No. 1	$ 136.00
Oct. 13, 189..	By cash paid Sarah Smith, on order No. 3	89.00
Nov. 14, 189..	By cash paid Nicholas Hoover, on order No. 4	135.00
May 3, 189..	By cash paid Louisa Martin, on order No. 7	82.00
May 4, 189..	By cash paid Jas. M. Higgins, on order No. 10	115.00
May 4, 189..	By cash paid Stephen Phelps, on order No. 11	175.00
May 5, 189..	By cash paid Amelia Mason, on order No. 13	95.00

NOTE.—A similar account is to be kept with the school-house fund and contingent fund, and a statement of the condition of any fund is to be rendered at any time when required by the board. By keeping a correct account of the orders, as per form 20, the treasurer will know the amount outstanding, and can readily determine what per cent on each he can pay with the funds on hand.

The above form is intended for separate pages opposite each other.

NUMBER 24.

[Section 1751.]

Report of the Treasurer of the.....District .....

of....., for the year ending September....., 189..

DR. SCHOOL-HOUSE FUND. CR.

	$... ..		$... ..
On hand at last report	... ..	Paid for school-houses and sites	... ..
Received from district tax	... ..	Paid on bonds and interest	... ..
Received from other sources	... ..	Paid for library and apparatus	... ..
		Transferred to other funds	... ..
		Paid for other purposes	... ..
		On hand	... ..
Total	... ..	Total	... ..

DR. CONTINGENT FUND. CR.

On hand at last report	$...	..	Paid for fuel, rent, repairs, insurance, and janitors	$...	..
Received from district tax	....	..	Paid secretary and treasurer	....	..
Received from sale of text-books and supplies	....	..	Paid for records, dictionaries, and apparatus	....	..
Received from school-house fund and other sources	....	..	Paid for text-books and supplies to be resold	....	..
			Paid for general supplies	....	..
			Paid for other purposes	....	..
			On hand	....	..
Total	....	..	Total	....	..

DR. TEACHERS' FUND. CR.

On hand at last report	$...	..	Paid teachers since last report	$...	..
Received from district tax	....	..	Paid other districts for tuition	....	..
Received from semi-annual apportionment	....	..	Paid for other purposes	....	..
Received by transfer from school-house fund	....	..	On hand	....	..
Received from other sources	....	..			
Total	....	..	Total	....	..

I hereby certify that the foregoing report is correct.

..... post office, September....., 189..

....., *Treasurer.*

NOTES.—(*a*) The totals of the debit and credit columns in each fund MUST, IN ALL CASES, BE EQUAL; the report should exhibit the exact amounts received and paid out by the district since the date of last report. Unpaid orders are not to be reported.

(*b*) The amount *on hand at last report* MUST BE IDENTICAL with the amount reported *on hand* in your last report to the county superintendent.

(*c*) The treasurer is required to make a full report to the board, at the expiration of his term of office on the third Monday of September, and to file a copy of the same immediately with the county superintendent. Section 1751 and notes.

(*d*) The report must be made *in the identical items* printed on this blank. Any deviation or interlining simply causes the county superintendent the trouble of condensing. Itemize fully, and take pride in making *paid for other purposes* as small as possible.

(*e*) The report made to the county superintendent should be identical with the final report for a full year made by the treasurer to the board at its meeting on the third Monday in September.

NUMBER 25.

Form of Contract between Subdirector (or Secretary), and Teacher.

[SECTIONS 1753, 1757, 1758.]

This contract, between .....of..... .....county, Iowa, and....., subdirector of subdistrict No.....of the district township of ....., in the county of.....and state of Iowa, witnesseth:

That the said....., agrees to teach the public schools in said subdistrict for the term of.....weeks, commencing on the.....day of....., 189.., and well and faithfully to perform the duties of teacher in said school, according to law, and the rules legally established for the government thereof, including the exercise of due diligence in the preservation of school buildings, grounds, furniture, apparatus, and other school property.

In consideration of said services, the said....., as subdirector aforesaid, in behalf of said district township, agrees to pay the said....., the sum of.....dollars per school month, at the end of....., and to perform all the duties required by law as such subdirector.

Witness our hands this .....day of....., 189..

.....,
Teacher.

.....,
Subdirector.

The within contract is hereby approved this.....day of....., 189..

.....,
President.

NOTE.—With a little variation the above form will answer for independent districts. The subdirector should file the contract with the president and secure his approval before the teacher enters upon his duties. The president cannot withold his approval, unless there has been a violation of law, or the instructions of the board have been disregarded.

NUMBER 26.

Form for List of Heads of Families and Children, to be kept by Subdirectors.

[Section 1754.]

PARENTS OR GUARDIANS.	NAMES OF CHILDREN.	SEX.	AGE.
John Smith.....	Peter Smith.....	Male.....	10 years.
	Eliza Smith.....	Female.....	12 years.
James Jones.....	William Jones.....	Male.....	8 years.
	Charles Peters, (ward).....	Male.....	15 years.
Anna Byron.....	James Byron.....	Male.....	12 years.

NOTE.—The above list should be recorded in a book, and carefully preserved with the records of the subdistrict, from this record the subdirector will be able to make his annual report to the district secretary, as required by section 1755.

NUMBER 27.

Form for Teacher's Daily Register of Attendance.

[Section 1759.]

Register of the school taught in subdistrict number....., of the district township of ....., county of....., and state of Iowa for the term commencing May 18, 189..., and closing..... ....., 189....

....., Teacher.

No.	PUPILS. NAME.	Age.	MAY. DAY OF MONTH. M., 18.	T., 19.	W., 20.	Th., 21.	F., 22.	Weekly summary.	M., 25.	T., 26.	W., 27.	JUNE. Th., 28.	F., 29.	Weekly summary.	M., 1.	T., 2.	W., 3.	Th., 4.	F., 5.,	Weekly summary.	Total attendance in days.	BRANCHES STUDIED. Orthography.	Reading.	Writing.	Mental Arithmetic.	Written Arithmetic.	Geography.	Grammar.	Physiology.	U. S. History.	Stimulants and narcotics.
1	Peter Smith.....	10	E		10e /			4.5	x		15e			4	7·					5	13.5	*	*	*	*	·	*				*
2	Eliza Smith..	12	E.				5e /	4.5					/	4.5	/	/	x			3	12	*	*	*	*	*	*	*	*	*	*
3	William Jones.....	8	E			x		4		6				5		7				5	14	*	*	*	*						*
4	Charles Peters.....	15	E					5						5						5	15	*	*	*	*	*		*			*
5	James Byron.	12				E		2	/	e	x	/	4e	3						5	10	*	*	*	*						*
6	Thomas Ward.....	9								E				4			x	x	x	3	6	*	*	*	*						*

NOTE—The board should supply each school-room in the district with a bound copy of school register. In the above form, E indicates the date of the pupil's entrance; \, absence in the forenoon; /, absence in the afternoon; 20, twenty minutes late in the forenoon; 10e, ten minutes late in the afternoon, excused. The absence of marks indicates that the pupil was present the entire day. Absence at roll-call is indicated by a dot, which is afterward changed by figures, or a diagonal mark, as the circumstances require; * indicates branch studied.

NUMBER 28.

Form of Teacher's Term Report to District Secretary.

[Section 1760.]

Register of the school taught in subdistrict number ...., of the district township of..... ....., in the county of..... ....., and state of Iowa, for the term commencing on the 18th day of May, 189.., and ending.. ...., 189..

PUPILS.			Attendance in days for weeks commencing												Total attendance in days.	BRANCHES STUDIED.											
No.	NAME.	Age.	May 18.	May 25.	June 1.	June 8.										Orthography.	Reading.	Writing.	Mental Arithmetic.	Written Arithmetic.	Geography.	Grammar.	Physiology.	U. S. History.	Stimulants and Narcotics.	
1	Peter Smith.....	10	4, 5	4	5											*	*	*	*		*				*	
2	Eliza Smith..... ...	12	4, 5	4, 5	3											*	*	*	*	*	*	*	*	*	*	
3	William Jones.	8	4	5	5											*	*	*	*						*	
4	Charles Peters.....	15	5	5	5											*	*	*	*	*		*			*	
5	James Byron.....	12	2	3	5											*	*	*	*						*	
6	Thomas Ward	9		4	2											*	*	*	*					*	*	

I hereby certify that the above is a faithful and correct register of said school.

...., *Teacher.*

NUMBER 29.

Form of Teacher's Certificate.

[Sections 1766, 1767.]

TEACHER'S.....CLASS CERTIFICATE.

OFFICE OF COUNTY SUPERINTENDENT,
....county, Iowa,
No..... ...., 189..

This certifies that..... .....has passed an examination, as required by law, with results hereto appended, and that.....possesses a good moral character, aptness to teach and ability to govern. I hereby authorize .....to teach in the public schools of.....county for a period of.....months from the date of this certificate.

	Per cent.		Per cent.
Orthography.....	.....	U. S. History.....	.....
Reading	....	Effects of stimulants, etc...	.....
Writing	.....	Theory of teaching.....	.....
Arithmetic.....	.....	Practice of teaching.....	.....
Geography.....	.....	....	.....
Grammar..... ...	.....	.....	.....
Physiology.....	.....	....	.....

....,
County Superintendent.

NOTE.—This certificate is valid only in the county where granted.

NUMBER 30

Form for Monthly Report of Institute Fund.

[Section 1769.]

Received from examination fees, for the month of....., and paid to the treasurer of..... county, Iowa, as required by Chapter 57, Laws of 1874, as amended by Chapter 54, Laws of 1878.

	NAME OF APPLICANT.	AMOUNT RECEIVED.		NAME OF APPLICANT.	AMOUNT RECEIVED.
1		$.....	27		$..... ....
2		....	28		....
3		....	29		....
4		....	30		....
5		....	31		....
6		....	32		....
7		....	33		....
8		....	34		....
9		....	35		....
10		....	36		....
11		....	37		....
12		....	38		....
13		....	39		....
14		....	40		....
15		....	41		....
16		....	42		....
17		....	43		....
18		....	44		....
19		....	45		....
20		....	46		....
21		....	47		....
22		....	48		....
23		....	49		....
24		....	50		....
25		....	51		....
26		....	52		....
				Total.....	$..... ....

I certify that the above report is correct.

....., Iowa. ....., *County Superintendent.*

.....1, 189..

NOTES—(*a*) The monthly report and payment of institute fund required by section 1769 should be made on the first day of each month.

(*b*) By section 1769, one dollar must be paid by every applicant for a certificate.

NUMBER 31.

Form for Receipt of Institute Fund.

[Section 1769.]

$.....

RECEIVED OF....., superintendent of schools..... .....county, Iowa, ...dollars institute fund.

....., Iowa. .....,

.....1, 189.. *County Treasurer.*

NUMBER 32.

Form of Application for Teachers' Normal Institute.

[Sections 1769 and 1584.]

OFFICE OF COUNTY SUPERINTENDENT,
.....county, ...189..

To the Superintendent of Public Instruction:

From satisfactory evidence on file in this office, I hereby certify that not less than twenty teachers desire to assemble at.....,
.....county, Iowa, on the.....day of..... , 189.., for the purpose of holding a teachers' normal institute, to remain in session for a period of..... .....weeks.

I shall act as director, and have appointed subject to your approval,
..... conductor,
and....., assistants
and hereby request your concurrence in said appointments.

.....,
County Superintendent.

NUMBER 33.

Form for Report of Registration Fees, Institute Fund.

[Section 1769.]

Received from registration fees of normal institute, held at....., commencing....., 189.., for a period of.....weeks, and paid to the treasurer of.....county, Iowa, as required by Chapter 57, Laws of 1874, as amended by Chapter 54, Laws of 1878.

	NAME OF TEACHER.	AMOUNT RECEIVED.		NAME OF TEACHER.	AMOUNT RECEIVED.
		$			$
1			27		
2			28		
3			29		
4			30		
5			31		
6			32		
7			33		
8			34		
9			35		
10			36		
11			37		
12			38		
13			39		
14			40		
15			41		
16			42		
17			43		
18			44		
19			45		
20			46		
21			47		
22			48		
23			49		
24			50		
25			51		
26				State appropriation	
				Total	$

I hereby certify that the above report is correct.

.....

County Superintendent.

....., Iowa.

....., 189..

NUMBER 34.

Form of Order on Institute Fund.

[Section 1769.]

OFFICE OF COUNTY SUPERINTENDENT,

$..... ..... county, ..., 189..

To ....., Treasurer of ..... county:

Pay to..... ... , or order, ... dollars out of the institute fund, for..... ....., as per bill No....., approved this day, as required by law, and on file in my office.

No ....,

County Superintendent.

NOTE.—The county superintendent must pay to the county treasurer all moneys received for the institute fund, including the warrant for the state appropriation. He should not issue warrants for a greater amount than the funds in the hands of the county treasurer will pay off and satisfy.

NUMBER 35.

Form for Revocation of Teacher's Certificate.

[Section 1771.]

OFFICE OF COUNTY SUPERINTENDENT,

..... county, ..., 189..

To the Boards of School Directors in the county of ....., and State of Iowa:

WHEREAS, On the ..... day of ...., 189.., a certificate was issued authorizing .... to teach in the public schools of this county; and,

WHEREAS, Upon due examination, of which the said..... received personal notice, and was permitted to be present and make..... defense, it appeared that the said ..... in consequence of (*here state the offense—gross immorality, for example*), is unworthy longer to retain the same.

Now, therefore, in pursuance of the provisions of section 1771, of the school laws of the state of Iowa, the said certificate is hereby revoked, to take effect from and after the date hereof.

.....,

County Superintendent.

NOTE.—A copy of the above revocation should be transmitted to the secretary of each district, and the secretary should immediately notify each subdirector in his district of the fact. The teacher should also be served with a copy.

NUMBER 36.

Form for Certificate to the Board of Supervisors of the Tax Determined by the Board of Directors.

[Section 1777.]

....., 189..

To the Board of Supervisors of ..... county:

I hereby certify that a tax of .... dollars was this day determined by the board of directors of the district township of..... in the county of ....., and state of Iowa, for the contingent fund, and..... dollars for the teachers' fund as provided in section 1777 of the Code.

....,

Secretary

NUMBER 37.

Form of Certificate to the Board of Supervisors of Tax Voted by the District Township.

[Sections 1777, 1778.]

....., 189..

To the Board of Supervisors of.....county, Iowa:

I hereby certify that at a meeting of the electors of the district township of....., in the county of....., and state of Iowa, held on the second Monday in March, 189.., a tax of.....dollars was voted for school-house purposes; and that this tax has been apportioned by the board of directors among the subdistricts as follows:

Upon subdistrict No. 1,..... .....dollars.
Upon subdistrict No. 2,..... .....dollars.
Upon subdistrict No. 3,..... .....dollars.
Upon subdistrict No. 4,..... .....dollars.
Upon subdistrict No. 5,..... .. ..dollars.

.....,

Secretary.

NOTE.—All school-house taxes voted by the district township electors, must be apportioned among the subdistricts. Section 1778.

NUMBER 38.

Form for Certificate of Tax voted by a Subdistrict, and not Granted by the District Township Electors.

[Section 1778.]

I hereby certify that the electors of subdistrict No.....in the district township of....., at the last annual meeting, voted to raise the sum of.....dollars, for school-house purposes, more than was granted by the electors of said district township.

....., *Secretary.*

....., 189..

NOTE.—The subdistrict electors may vote a tax for school-house purposes and certify the same to the district township meeting. Form 5. Whatever portion of this sum the township electors neglect or refuse to grant, must be certified to the board of supervisors to be levied directly upon the subdistrict making the request. Section 1778.

NUMBER 39.

Form for Notice from the County Auditor of the Amount of Semi-annual Apportionment.

[Section 1782.]

OFFICE OF COUNTY AUDITOR,
.....county, ..., 189..

To....., *President of the District Township of*.....

Sir:—You are hereby notified that according to the semi-annual apportionment made this day, as provided by section 1781, Code, the sum of.....dollars is due the district township of....., in the county of ....., and state of Iowa, for which I hand you herewith my warrant on the county treasurer.

....., *County Auditor.*

NOTE.—This warrant must be signed by the president and countersigned by the secretary of the board, to authorize payment of the amount named therein upon presentation by the district treasurer.

NUMBER 40.

Form of Certificate of Election of County Superintendent.

[Section 1783.]

OFFICE OF THE COUNTY AUDITOR,
..... county, ...189..

I hereby certify that..... ... ..was elected to the office of county superintendent, for the term commencing January....., 189..
His post office address is....., Iowa.

.....,
County Auditor.

NOTE.—This certificate should be forwarded to the superintendent of public instruction immediately after the result of the election is officially determined.

NUMBER 41.

Form for Certificate of Qualification of County Superintendent.

[Section 1783.]

OFFICE OF COUNTY AUDITOR,
..... county,....., 189..

I hereby certify that ..... has duly qualified for the office of county superintendent, as required by sections 675 and 678, Code, for the term commencing January ....., 189..
His post office address is ....., Iowa.

....,
County Auditor.

NOTE—This certificate should be forwarded to the superintendent of public instruction as soon as the qualification and bond is filed in the office of the county auditor, after such bond has been approved by the board of supervisors.

NUMBER 42.

Form for Notice from County Treasurer of School Tax Collected.

[Section 1785.]

OFFICE OF COUNTY TREASURER,
.....county, ..., 189..

To....., *President of the Board of Directors of the District Township of*.....:

You are hereby notified that the amount now collected and due the district township of....., in.....county, Iowa, is:

$..... ..school-house fund.
$.....contingent fund.
$.....teachers' fund.

.....,
County Treasurer.

NOTE.—It is the duty of the county treasurer to notify the president of the board of each district, quarterly, of the amount collected for each fund and pay it to the district treasurer on the warrant of the president countersigned by the secretary.

On the first Monday in April of each year, the county treasurer also renders a statement of the amount of taxes uncollected in each district township. Section 1784.

The treasurer is required to pay over the amount of each fund collected, monthly, to independent districts, on the order of the board.

NUMBER 43.

Form of Notice Permitting the Attendance of Pupils from Adjoining Districts.

[Section 1793.]

To..... .., *Secretary of the Board of Directors of the District Township of*.....:

Notice is hereby given that..... ..... and....., pupils residing in the district township of ....., have been granted permission by the board and county superintendent to attend school in subdistrict No. ....., in the district township of..... ....., commencing on the..... day of....., 189.., for a term of... ..... months.

Dated at.....,
.....189.. .....,
President.

.....,
Secretary.

NOTE.—By section 1793, when boards cannot agree on the attendance of scholars in adjoining districts, they may attend, if the other conditions of law are fulfilled, by permission of the board where they wish to attend, and the consent of the county superintendent of the county where they reside, but tuition can be collected only from date of the official notice.

NUMBER 44.

Form of Application for Appointment of Appraisers of School-house Site.

[Section 1827.]

To....., *Superintendent of* .....*county, Iowa:*

In accordance with the action of the board of directors of the district township of....., you are hereby requested to appoint three disinterested persons to inspect, and assess the damages which the owner will sustain by appropriating for school purposes, the following described real estate, viz: .....
.....
.....

Dated at.....,
....., 189..

....., *President.*

....., *Secretary.*

NUMBER 45.

Form for Appointment of Appraisers of Site for School-house.

[Section 1827.]

To..... ....., ...*and*.....:

You are hereby appointed and constituted a board of appraisers, under the provisions of section 1827 of the Code to assess the damages which the owner will sustain by the appropriation for school purposes, of the following described real estate, viz: .....
.....
.....
in subdistrict No....., of the district township of.....
in the county of ....., and state of Iowa, containing one acre of land, exclusive of highway.

You will therefore, on the.....day of....., 189.., at..... o'clock....m., proceed to examine the real estate above described, and assess, under oath, the cash damages which the owner will sustain by the appro-

priation of said land for school purposes, and immediately thereafter report to me in writing the amount of said damages.

Dated at.....,

.. .., 189.. .....,

County Superintendent.

Oath of Appraisers.

We, ..., ...and....., do solemnly swear that we will well and truly, and to the best of our ability perform all of the duties imposed upon us by the foregoing commission.

.....,

.....

.....

Subscribed and sworn to before me by..... .... and....., this .... day of ....., 189..

..... ,

.....

NOTE.—Sufficient time must be allowed between the appointment of this commission and the time set for appraising the damages to give the owner legal notice thereof.

NUMBER 46.

Form of Notice to Owner of Real Estate of Appointment of Appraisers.

[Section 1827.]

To ....., ... county, Iowa:

You are hereby notified that I have this day appointed appraisers to assess the damages which the owner will sustain by the appropriation for school purposes, of the following described real estate, viz :..... .. ..

.....

.....

.....

Said appraisers will meet at the above described real estate, on the ..... day of....., 189.., at ..... o'clock, ... m., and assess said damages as provided by section 1827 of the Code of Iowa.

Dated at .....,

....., 189.. ... .,

County Superintendent.

NUMBER 47.

Form for Report of Appraisement of Property for School Purposes.

[Section 1827.]

To....., Superintendent of.....county, Iowa:

We, the undersigned, having been appointed to appraise the damages which the owner will sustain by the appropriation, for school purposes, of the following described real estate, viz.: .....
.....
.....
.....
do hereby report that we have on this.....day of....., 189.., carefully examined said described real estate, and have appraised the damages at.....dollars.

Dated at.....,
....., 189..

.....
.....
..... } *Appraisers.*

NUMBER 48.

Form of Notice of Assessment of Damages.

[Section 1827.]

To.....county, Iowa:

You are hereby notified that appraisers were appointed to assess the damages which the owner would sustain by the appropriation for school purposes, of the following described real estate, viz.: .....
.....
.....
.....
and that said appraisers met at said premises on the.....day of..... 189.., and assessed said damages at.....dollars, as shown by their report on file in my office.

Dated at.....,
....., 189..

.....,
County Superintendent.

NUMBER 49.

Form of Affidavit of Appeal.

[Section 1830.]

STATE OF IOWA, }
..... county. } ss.

..... }
v.
DISTRICT TOWNSHIP OF..... }

I, ..., being duly sworn, on oath, say: that on the ..... day of ....., 189.., the board of directors of said district township rendered a decision (or made an order) whereby (*here, state facts showing affiant's interest in the decision, and the injury to that interest;*) that said board in rendering the decision (or making the order) aforesaid, committed errors as follows: (*Here state the errors charged.*)

.....

Subscribed and sworn to by ....., before me, this..... day of....., 189....

.....,
....

NUMBER 50.

Form for Notice of Appeal.

[Section 1832.]

STATE OF IOWA, }
..... county. } ss.

..... }
v.
DISTRICT TOWNSHIP OF..... }

TO.....,
Secretary of the Board of Directors of the District Township of.....:

You are hereby notified that.....has filed in my office an affidavit alleging that said board of directors, on the.....day of..... ....., 189.., made a decision (*or an order*) whereby (*here describe the decision or order so that the secretary may identify it*), and claiming an appeal therefrom. You are therefore required within ten days after receiving this notice, to file in my office at....., in said county, a complete transcript of the record of the proceedings of the board relating to said order, together with copies of all papers filed with you pertaining to said action appealed from.

Dated at ....,
....., 189...

.....,
County Superintendent.

NUMBER 51.

Form of Certificate to District Secretary's Transcript.

[Section 1832.]

I, ..., secretary of the board of directors of the district township of..... ....., in the county of....., Iowa, hereby certify that the foregoing is a correct and complete transcript of the record of all proceedings of the board and of all papers filed relating to the case.....*v.* .....

Dated at .....,

....., 189..

....., *Secretary.*

NOTE.—The secretary's transcript will contain:

A copy of all that portion of the records of the proceedings of the meeting, relating to the action appealed from, with the date of the meeting.

A copy of each petition, remonstrance, plat, or other paper relating to said action, submitted to the board, to which will be annexed the above certificate.

NUMBER 52.

Form for Notice of Hearing of Appeal.

[Section 1833.]

STATE OF IOWA, ...county. } ss.

..... }
v. }
DISTRICT TOWNSHIP OF..... }

To.....:

You are hereby notified that there is on file in this office a transcript of the proceedings of the board of directors of the district township of..... ....., at a meeting held on the.....day of....., 189.., in relation to *(here describe the decision or order appealed from)*, from which appeal has been taken; and that the said appeal will be heard before me at....., in said county, on the.....day of ....., 189.., at .....o'clock.....m.

Dated at.....,

....., 189..

....., *County Superintendent.*

NOTE.—The appellant, the president, the secretary of the board, and other parties known to be directly interested, should receive a copy of this notice.

NUMBER 53.

Form of Certificate to County Superintendent's Transcript.

[Sections 1832, 1835.]

I, ..., superintendent of..... county, Iowa, hereby certify that the foregoing is a correct and complete transcript of the records of all proceedings had, evidence given, and papers filed in my office, and my rulings thereon; also of my decision in the case..... .....

Dated at.....,
..... , 189..

....,
County Superintendent.

NOTES. (*a*) The date of filing every paper should be indorsed thereon, also in the case of motions, orders and rulings of the county superintendent. All oral motions and an abstract of the testimony should be reduced to writing at the time of trial.

(*b*) The transcript of the county superintendent will consist of a literal copy of every paper filed and all indorsements thereon, together with a copy of all testimony given, the whole arranged in chronological order, closing with the decision of the county superintendent in full, with the above certificate annexed.

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SCHOOL LAW DECISIONS

IN

APPEAL CASES

BY THE

Superintendent of Public Instruction.

EDITION OF 1892.

COMPILED FOR THE USE OF SCHOOL OFFICERS

BY

J. B. Knoepfler,

SUPERINTENDENT OF PUBLIC INSTRUCTION

DES MOINES:
GEO. H. RAGSDALE, STATE PRINTER.
1892.

PREFACE.

From the large number of appeal cases rendered since 1864, we have selected those which appear to us as most likely to be of value to county superintendents and district boards in the discharge of their official duties.

Every available means has been utilized to bring this compilation into the best possible shape for general use. Here and there an additional syllabus has been prefixed to a case. The index at the close o the decisions has been extended materially by the addition of a larger number of particulars.

Where an appeal decision is referred to without joining any reference with the title to the case, such decision is to be found in the present volume by consulting the table of cases.

We improve this opportunity to invite attention to a few important matters too often overlooked.

Certain classes of cases may be determined only by the courts of law. No appeal may be taken from an action of the electors. The title to an office or the right to exercise the privileges of the office must be decided in court. Writs and special orders must issue from a court. Where the validity or the enforcement of a contract is the leading feature, a court must hear the case. The validity of district organization may be determined by *quo warranto* but not by appeal. In the trial of an appeal, as soon as it becomes clearly apparent that the principal issue is of a kind intended by our statutes to be heard and determined only by the courts of law, the appeal should be dismissed.

County superintendents should give great weight to acts of a board purely discretionary in their nature. Unless such acts are plainly shown

in the testimony to be the result of manifest injustice or improper motives, or in some other way an abuse of discretion, the action of the board should be affirmed. The county superintendent is given the power to review an action of the board to determine whether the official authority possessed by the board was exercised in the manner intended by the law. If he finds positive error, he is authorized to reverse the order complained of. But the error must appear clearly. If compelled to reverse, the decision should contain all the reasons for such a conclusion; and the portions of the testimony relied upon in support of the finding, with the authorities followed and governing, should be fully pointed out.

The same weight which county superintendents are required to accord to discretionary acts of boards will be given by this department to the discretion of county superintendents in granting, refusing, or revoking certificates, and in granting or refusing to grant a rehearing in cases of appeal.

When appeal is taken to this office, it is greatly to the advantage of all concerned, for the county superintendent to take great care in preparing the transcript. Each paper should be so marked as clearly to indicate its character. The pages of the testimony should be numbered, and the entire transcript fastened together. If the transcript can possibly be put into type-written work, especially if the testimony is lengthy, a great deal of valuable time will be saved to the reader, and the improved appearance over written work will assist very much in arriving at the merits of the case the more readily. The map, which is an essential part of every case where boundaries or sites are in question, should not fail to show all possible information of value to a clear understanding of the particular case. A complete and accurate plat, agreed to by all parties at the time of trial as being correct, often furnishes a key to the whole situation.

One copy of this book is supplied to each district, to be kept in the hands of the secretary and transmitted by him with the other records to his successor

It is presumed that the following decisions correctly construe the present school law, and we think a careful and systematic study of them will assist in the administration of school affairs and result in many cases in answering inquiries likely to arise, besides sometimes entirely removing the necessity for an appeal.

J. B. KNOEPFLER,

DES MOINES, July 1, 1892. *Superintendent of Public Instruction.*

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SCHOOL LAW DECISIONS.

JANE BROWN v. DISTRICT TOWNSHIP OF RICHLAND.

Appeal from Tama County.

1. SUBDISTRICT BOUNDARIES: *Change of.* In changing subdistrict boundaries, both the present and the future welfare of the district township should be considered.
2. SUBDISTRICT: *Size of.* It is better to have large subdistricts with good school-houses well furnished, than small subdistricts with undersized and poorly furnished school-houses.

The board of said district township at their regular meeting in September, 1864, changed the boundaries of certain subdistricts, whereby subdistrict number seven and a portion of subdistrict number one, were attached to subdistrict number five. From this order of the board an appeal was taken to the county superintendent, who after a full and fair investigation of the case, sustained the action of the board. From his decision an appeal is brought to the superintendent of public instruction.

It is not claimed that either the board or the county superintendent committed errors in law or exceeded their jurisdiction. Everything seems to have been done fairly and openly, and a final decision of the case is asked for solely on the ground of equity and justice. Appellants claim that subdistrict number seven has a good school of thirty-four scholars, and that by the proposed change three-fourths of these will be cut off from school privileges in consequence of their distance from the proposed site of the new school-house.

But it is shown by testimony that by building a bridge across a certain stream the distance will be diminished, so that all parties will be accommodated. There is no assurance in the record before us that the bridge will be built this year or next. Meanwhile a large number of children may be deprived of school. As a general rule it is better to have large subdistricts with good school-houses well furnished, than to have small subdistricts with small and poorly furnished school-houses.

We believe the board had in view the welfare of the whole district, as did also the county superintendent in confirming their action, but we can see no injustice in this case in allowing the subdistricts to remain another year without change, or until the proposed bridge is built. The reason for consolidating the subdistricts now will probably exist then, and the occasion for complaint will then be removed.

In this view of the case we feel compelled to reverse the decision of the county superintendent.

REVERSED.

ORAN FAVILLE,

March 1, 1865. *Superintendent of Public Instruction.*

Sarah E. Smith v. District Township of Albion.

Appeal from Howard County.

1. Teachers: *Right of, to inflict punishment upon their pupils.* A school-master who stands in *loco parentis* may, in proper cases, inflict moderate and reasonable chastisement. The law confides to teachers a discretionary power in the infliction of punishment upon their pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child, or be inflicted merely to gratify their own evil passions.

2. ——— : ———. The teacher is responsible for the discipline of his school, and for the progress and deportment of his scholars. It is his imperative duty to maintain good order and require of all a faithful performance of their duties. If he fails to do so he is unfit for his position. To enable him to discharge these duties effectually, he must necessarily have the power to enforce prompt obedience to his requests. For this reason the law gives him the power, in proper cases, to inflict corporal punishment upon refractory scholars.

The record in this case shows that the plaintiff, Sarah E. Smith, entered into a contract with the subdirector of subdistrict number two in said district township, to teach a school for four months, commencing on the 19th of December, 1864. That she commenced her school accordingly and taught until the 30th of January, 1865. That on the 29th of January she was notified to meet the board to answer to the charge of undue severity in chastising one of her pupils; that she attended the meeting of the board and made her defense, but the board decided to expel her from her school, paying her for the time she had taught. From this action of the board she appealed to the county superintendent, who reversed the order of the board, and from the decision of the county superintendent an appeal is brought to the superintendent of public instruction.

It is claimed on the part of the board that the county superintendent had no jurisdiction, and that he erred in entertaining the appeal and reversing the order of the board; but having gone to trial before the county superintendent, and having submitted the case, after making their defense they cannot now plead want of jurisdiction.

The testimony shows that the pupil, a boy of some twelve years of age, did not like the seat assigned him by the teacher, and asked permission to go out, which was given; that he started toward home; that the teacher called to him to come back, threatening to punish him if he disobeyed; that he went home and remained out of school about a week; that at the close of the school on the day he returned the teacher reminded him of the punishment threatened, and proceeded to administer

it, striking him over the shoulders and back with a whip furnished by one of the pupils; that the boy resisted, striking back, snatching away the whip and using bad language; that the teacher obtained another whip, a willow switch, and administered several strokes with it, some of which were across his head and face, in consequence of which one of the boy's eyes was apparently injured. An older brother of the boy then interfered, and the "affray ended".

It does not appear that the teacher punished hastily or in anger, or that it would have been too severe, or improperly administered, had the boy not resisted. It is doubtful whether the resistance justified the teacher in striking the boy across the head and thereby causing an injury, fortunately temporary, to one of his eyes. The county superintendent regarded this as accidental, and as no permanent injury was sustained, justified the teacher.

Much has been written during the last twenty-five years in regard to the proper means to be used for maintaining the authority of the teacher over the pupils. We can remember when the whip was applied very frequently and very severely, when the pupil obeyed from fear of punishment, and not from any sense of duty or of respect for authority. Since that time there has been a great change; appeals to reason, to a sense of duty and to right have been successfully used by the most competent teachers. In many schools the rod is excluded, and yet ready and cheerful obedience is secured from the pupil. We wish such a result could be reached in all the schools; that the teacher could inspire the pupils with such a love for order, for good government and for rightful authority; with such a love for right doing and such a hate for wrong doing, that it would only be necessary to point out the path of duty instead of the command to walk in it. While family government and the public sentiment of some communities may render such a course possible, the want of family government and the loose reins given to "Young America" in many communities require strong and physical force to hold in subjection unsubdued nature.

All admit that the teacher must maintain authority, and for that purpose he is sustained by the highest authorities in inflicting moderate punishment. In Kent's Commentaries, 9th edition, volume 2, page 222, is the following: "A school-master who stands in *loco parentis*, may in proper cases inflict moderate and reasonable chastisement."

In Wharton's American Criminal Law, 5th edition, volume 1, page 669, is the following: "The law confides to school-masters and teachers a discretionary power in the infliction of punishment upon their pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child, or be inflicted merely

to gratify their own evil passions." *State v. Pendergrass*, 2 Dev. & Bat., 407.

"On the trial of an indictment of a school-master for an assault on a pupil the judge refused to instruct the jury that the defendant was criminally liable for punishing a pupil only when he acted *malo animo*, from vindictive feeling, passion, or ill-will, or inflicted more punishment than was necessary to secure obedience, and not for error of opinion or judgment, provided he was governed by an honest purpose to promote discipline and the highest welfare of the school, and the best interests of the child; and instructed them that in inflicting corporal punishment a teacher must exercise reasonable judgment and discretion, and be governed as to the mode and severity of the punishment by the nature of the offense, the age, size, and apparent powers of endurance of the pupil." *Commonwealth v. Randall*, 4 Gray (Mass.), 36.

"If there is any reasonable doubt that the punishment was excessive the master should have the benefit of it." *Lander v. Seaver*, 32 Vt. (3 Shaw), 114.

We add the following as having some bearing on this case: "Though a school-master has in general no right to punish a pupil for misconduct committed after the dismissal of a school for the day, and the return of the pupil to his home, yet he may, on the pupil's return to school, punish him for any misbehavior, though committed out of school, which has a direct and immediate tendency to injure the school and to subvert the master's authority." *Lander v. Seaver*, *supra*.

Many other authorities might be cited establishing the authority of the teacher to inflict punishment necessary for securing obedience to reasonable rules. As it is not shown in this case that the rules were unreasonable or the punishment severe (the teacher must have the benefit of the doubt in regard to the manner of punishing), the decision of the county superintendent is

AFFIRMED.

ORAN FAVILLE,

April 22, 1865. *Superintendent of Public Instruction.*

MARIA L. DOUGHERTY v. L. D. TRACY, COUNTY SUPERINTENDENT.

Appeal from Grundy County.

1. REVOCATION OF TEACHER'S CERTIFICATE. The order of a county superintendent revoking a certificate will not be interfered with on appeal unless it appears that he acted from passion or prejudice.

2. ———. Opinions unsupported by facts cannot be received as satisfactory evidence of prejudice.

April 1, 1867, L. D. Tracy, superintendent of common schools for the county of Grundy, revoked the certificate of Maria L. Dougherty, a teacher of said county, on the alleged ground of incompetency to properly govern and control a school. A notice of revocation made out in proper form, was duly served upon the secretaries of the several district townships. The plaintiff appealed to the superintendent of public instruction, who by circular of May 15, 1867, directed that the case should be heard by the county superintendent. Such hearing took place June 7, 1867. During the examination twenty-three persons, patrons and pupils, testified to the good order of the school, and the general good character and reputation of the plaintiff as a teacher. Fourteen persons made affidavit that they believed plaintiff's certificate was revoked from personal prejudice.

One witness called by the defense testified that the school was not governed as well as it might have been; that he several times heard cursing and swearing on the school grounds at noon and recess. Three persons testified that they did not believe the superintendent revoked plaintiff's certificate from prejudice or passion. Nineteen persons certified that they believed Mr. Tracy to be a competent and impartial officer, and free from any malicious administration.

The county superintendent, disregarding the weight of evidence in regard to the plaintiff's qualifications, affirmed his previous decision revoking plaintiff's certificate, and certified that the act was done without prejudice or passion toward the plaintiff, and that he was impelled to that conviction, which was the result of personal observation and knowledge that plaintiff was incompetent to govern a school properly. From that decision the plaintiff appeals.

If this case could be determined by the weight of evidence in regard to the plaintiff's ability to govern a school properly the decision would be in plaintiff's favor. But there are other elements for consideration. The county superintendent is clothed with large discretionary powers.

So great has this discretion been regarded that it has been held by previous incumbents of the office of superintendent of public instruction that the refusal to grant a teacher's certificate or the revocation of such certificate by a county superintendent was an act so wholly discretionary that it was not subject to revision. The circular of May 15, 1867, from this department, maintaining the right of appeal in such cases was not intended to curtail the discretionary power of county superintendents, but to point out a way in which its abuse might be corrected.

In the absence of special statutory provisions in regard to the manner of hearing appeals, it is presumed that general principles are applicable. It may not be amiss at this time to enunciate some general principles which will be observed in the adjudication of this and similar cases.

I. The discretion of a county superintendent in refusing or revoking a teacher's certificate will not be interfered with by the superintendent of public instruction unless it is clearly shown that the county superintendent in such act violated the law in letter or spirit, or was influenced by passion or prejudice. This position is believed to be correct in the light of both principle and public policy. The general rule is, "the supreme court will not interfere with the decisions of the district court in cases where the latter has a discretionary power, unless it is fully apparent that such power has been abused." Numerous cases might be cited in support of this rule, but such citations are deemed unnecessary. The county superintendent is presumed to be selected from among his fellow citizens on account of his ability to exercise a sound discretion in the discharge of the important duties of his office. He is bound by a solemn oath to discharge his trusts with fidelity. He is on the ground and has a personal knowledge of the circumstances. He can judge of the educational requirements of his county better than another person scores of miles distant. In his examination of teachers and in his visits to their schools he can judge of the teacher's comparative and actual merit and ability better than those who have less extended opportunities for observation. He is responsible to his constituents for the manner in which his duties are performed. His official acts may be reviewed and modified or annulled by the superintendent of public instruction. Frequent interference with the discretion of county superintendents would tend to bring their authority into contempt, and unsettle the foundations of our school system. While, then, the right to review an abuse of discretion is reserved, and the right to reverse an illegal decision maintained, the discretion of county superintendents will not be interfered with unless such interference is necessary to secure justice or vindicate law.

II. The proof of the violation of law, or of the influence of passion or prejudice in the performance of official duty must be clear and con-

vincing. Mere opinion, unsupported by facts, is insufficient to establish the allegation of passion or prejudice. "As a general rule, witnesses, unless experts, should state facts, not opinions." *Whitmore v. Bowman*, 4 G. Greene, 148. "Except when given by experts, evidence of mere opinion is not competent, unless upon some controlling ground of necessity: resulting from the nature of the inquiry." *Dalzell v. City of Davenport*, 12 Iowa, 437; *Danforth, Dennis & Co. v. Carter & May*, 4 Iowa, 230. In the light of these principles, which are believed to be correct and proper, conclusions may be readily formed.

The rulings of the county superintendent on the admission of evidence have no material effect on the final decision of the case, hence the exceptions of the plaintiff thereto are passed over.

The revocation of a teacher's certificate is adjudged to be an act of discretion on the part of the county superintendent, which will not be interfered with, without satisfactory proof of illegality or of prejudice.

In this case, while the weight of testimony is favorable to plaintiff's qualification, and opinion is conflicting in regard to prejudice, there is not a single fact adduced in the testimony upon which the theory of prejudice can be based. On the other hand the county superintendent headed a subscription to pay plaintiff's board, and was the first to pay said subscription. During the term he told the subdirector that the plaintiff must be sustained in her government of the school at all hazards; and these facts indicate the absence of prejudice. The mere opinion of witnesses, unsupported by facts, cannot be received as satisfactory evidence of prejudice.

Some embarrassment is experienced in this case from the circumstance that the plaintiff belongs to that gentler sex to which we are all educated to do homage, and the idea is largely prevalent that they are not amenable to law in an equal degree with the opposite sex; but having a high regard for the rights of women, we dare not pervert law even to shield them from its operation. We are therefore compelled to affirm the decision of the county superintendent.

AFFIRMED.

D. FRANKLIN WELLS,

October 1, 1867. *Superintendent of Public Instruction.*

Benjamin Smith v. District Township of Coffin's Grove.

Appeal from Delaware County.

1. Proceedings. In the absence of proof to the contrary, the legal presumption is that the proceedings before the county superintendent were entirely regular.

2. Explanatory Notes: *Force of.* Notes to the school law, while proper aids to school officers, have not the binding force of law, and a non-compliance with them is not necessarily a violation of law.

On the petition of the electors of subdistrict number one, the board located the site of a proposed new school-house "just east of the burying ground, on the right hand side of the road, adjoining the corner of Mr. Brook's field." From this action plaintiff appealed to the county superintendent on the 25th of March, by whom the case was heard April 19, 1867. On the 13th of June the county superintendent issued an order relocating the site three-quarters of a mile further south, and at or near the center of the subdistrict. From this order an appeal is taken.

The appellants claim a reversal of the county superintendent's decision on the ground: That the county superintendent had no jurisdiction in the matter; that the county superintendent erred in not taking the depositions of witnesses in writing and having the same signed and sworn to by the witnesses; that the county superintendent erred in not making up his record at the trial; and, on the merits of the case.

The denial of the county superintendent's jurisdiction is based on the fact that the original affidavit does not state that the appeal was taken within thirty days of the action of the board complained of, and reference is made to page 57 of "explanatory notes," in which it is stated that this fact should appear, though there is no such specific requirements in "An act to provide for appeals." The question naturally arises as to the legal force of these "explanatory notes." Have they the effect of statutory provisions, or otherwise? While the right of every tribunal to establish rules and regulations not inconsistent with law, must be admitted, these "explanatory notes" made by the superintendent of public instruction are not legal enactments, nor "rules and regulations," and so far from being mandatory in their character are merely advisory and directory, and intended for the assistance and guidance of school officers. They are a commentary on the school law; and as they are replete with good common-sense suggestions, their observance will render the administration of the school law more accurate and satisfactory; but a non-compliance with them is not necessarily a violation of law.

It must be admitted that an affidavit which does not state the date of the decision or act complained of is very carelessly drawn, and a superintendent might be justified in refusing to entertain it; but if it be entertained, it is still competent for the opposite party to show that the thirty days allowed by law had expired previous to the filing of the affidavit, and thus secure the dismissal of the case. The law gives the superintendent jurisdiction within thirty days, and the state superintendent could not by any rule or regulation annul the statutory provisions. It is not even claimed by appellants that the time for taking appeal had expired, and the date of petitions submitted to the board indicates that it had not expired. In the absence of proof to the contrary, the legal presumption is that the proceedings before the county superintendent were entirely regular, and therefore the jurisdiction of the superintendent must be sustained.

The second and third errors assigned by appellants are also based on "explanatory notes" instead of upon the law, and cannot be sustained for reasons previously given. While there were things in the management of this case from which we must withhold our commendation; as there seems to have been a substantial compliance with the law, we do not feel justified in dismissing it without an examination of its merits.

The county superintendent gave due notice of the hearing in writing to all the electors of the subdistrict. On the day of hearing several persons appeared, but no "evidence on either side was offered," except the original affidavit of Benjamin Smith. The record of the county superintendent goes on to say: "But to satisfy myself in regard to the number of inhabitants that would be accommodated best by the site remaining where it is at present located by said board," Nelson Bly, James McBride and Harry Baker were sworn. "Nelson Bly stated that about thirty families lived in said subdistrict, and that only about one-third would be accommodated by the site remaining where it is at present located by said board. James McBride corroborated the statements made by Nelson Bly." After Henry Baker was sworn "so much confusion and controversy arose" that it was found "almost impossible to preserve order," and the superintendent "proceeded to view the different sites."

Among the papers sent up by the district secretary were two petitions to the board, one signed by fifteen persons asking that the site should be located "at or near the corner of Mr. Brook's field;" the other signed by twenty-three persons, asking that the site be "established as near as practicable in the center of the subdistrict."

In view of the facts before us we cannot do otherwise than sustain the county superintendent, whose decision is

AFFIRMED.

D. FRANKLIN WELLS,

December 16, 1867. *Superintendent of Public Instruction.*

JOSEPH F. EDWARDS *et al.* v. DISTRICT TOWNSHIP OF WEST POINT.

Appeal from Lee County.

1. APPEAL. The right of appeal is not limited to cases of personal grievance.
2. DISCRETIONARY ACTS. The county superintendent having only appellate jurisdiction, should not reverse discretionary acts of the board, without explicit and clearly stated proof of the abuse of such discretion, even though not fully approving their action.
3. SUBDISTRICT BOUNDARIES: *Change of.* The acts of a board changing subdistrict boundaries and locating school-houses are so far discretionary that they should be affirmed on appeal, unless it is shown that there has been an abuse of discretion.
4. APPEAL DECISION: *Essentials of.* When the order of a board is reversed, the portions of the testimony relied upon should be pointed out and clear and convincing reasons should be given in support of the conclusion reached.

September 16, 1867, the board of the district township of West Point transferred one hundred and twenty acres of land belonging to one Timothy Allen, from subdistrict number one to subdistrict number three. From this alteration of subdistrict boundaries, Joseph F. Edwards *et al.* appealed to the county superintendent, by whom the order of the board was reversed. From this decision of the county superintendent Timothy Allen appeals.

It is not claimed that the board exceeded their powers in changing boundary lines, or in any respect violated law. While equality among the several subdistricts, in area, population, and taxable property, is in some respects desirable, it is not required by law, and in fact is impracticable. The claim in the argument of appellees that the action of the board was necessarily wrong, because it had the effect to increase the inequality in some or all of these respects, is not well founded. It is an element which should receive proper consideration, but it will not always exercise a controlling influence.

Mr. Nourse, in his argument for appellant, claims that "no right of appeal existed in the plaintiffs who took the case to the county superintendent;" hence, the county superintendent was without jurisdiction. He claims that to entitle a person to the right of appeal the grievance must be of a personal character, one that affects the rights or interests of the individual as distinguished from the public. In support of this view he refers to the following decisions by our supreme court: *Humphrey v. Ball*, 4 G. Greene, 204; *Myers v. Simms*, 4 Iowa, 500; *McCune v. Swafford*, 5 Iowa, 552; *Lippencott v. Allander*, 23 Iowa, 536. In all of

these cases it is held that there is no appeal from the county court or the board of supervisors, unless the grievance is of a personal or individual character as distinguished from the public; and hence by analogy it is claimed that there is no appeal from the board of school directors unless the grievance is of a like character. If the right of appeal in the two cases was derived from the same statute, the decisions cited above would be conclusive. But these decisions are based upon section 267, Revision of 1860, in which the right of appeal is limited to "any matter affecting the rights or interests of individuals as distinguished from the public," etc.; while appeals to county superintendents are based on section 2133, Revision of 1860, which provides that "any person aggrieved by any decision or order of the district board of directors in matter of law or fact," may appeal, etc. As section 2133 does not limit the right of appeal in cases of personal grievance, the decisions cited have no application in the case under consideration.

The important point upon which the issue in this case must turn remains to be stated. The meeting at which the change of subdistrict boundaries was made was attended by six of the eight members of the board, and after a full discussion of the proposed change and an examination of plats of the district, the change was made by unanimous vote, and subsequently approved by one of the absent members. The remaining subdirector, who resides in the subdistrict from which the territory was taken, opposes the change. It is not claimed that the law was violated in the change, but only that the educational interests of the district were impaired.

The question is not so much one of law as of sound judgment and discretion. The change was approved by seven of the eight members of the board, who reside in different parts of the township, six of whom at least are absolutely without personal interest in the matter. It is opposed by one whose pecuniary interests are contingently adversely affected. The county superintendent opposes his judgment to the judgment of the board. What, in such a case, is the duty of the ultimate tribunal?

The superintendent of public instruction has, as in duty bound, an earnest desire to sustain the acts and decisions of county superintendents. The legal presumption is always in favor of the correctness of official acts and decisions. While the state superintendent applies this principle to county superintendents, it is equally incumbent upon them to apply it to the decisions or orders of district boards of directors. It not unfrequently happens that county superintendents decide appeal cases upon their own judgment and discretion as if they had original, instead of appellate jurisdiction; and fail to give that consideration to the discretion of district boards, which the above principle requires.

The law prescribing the duties of boards of directors is, in some respects, mandatory, requiring that certain specific duties shall be performed in a particular manner. In other cases, the board acts as a local legislature, and its action is discretionary. Among these discretionary powers, though not including all of them, are the establishment and change of subdistrict boundaries, and the location of school-houses. It has been doubted by some whether an appeal to the county superintendent, from acts of the board wholly discretionary, would lie. While the right of appeal in such cases is maintained, the real character should not be lost sight of; and the action of the board within the limits of the law should not be reversed unless it is evident that it acted with passion, prejudice, or manifest injustice. It is a general principle in law that the exercise of discretionary power will not be interfered with unless it is fully apparent that such power has been abused. For further remarks on discretionary power and the manner of proving its abuse, reference is made to the case of *Dougherty v. Tracy, county superintendent.*

In changing the subdistrict boundaries, and locating school-houses, the law gives the board of directors original jurisdiction, and as it is discretionary power the action of the board should be affirmed on appeal, unless it is fully apparent by the evidence that the board violated law or abused its discretion. If there is reasonable doubt the board is entitled to its benefit. The action of the board may not be wholly approved by the judgment of the county superintendent, but if it be not illegal or clearly unjust it should be sustained. When, however, county superintendents feel called upon to reverse decisions of school boards, they should give a clear and explicit statement of their reasons for so doing, that the superintendent of public instruction may be the better enabled to judge of the soundness of their conclusions.

These general remarks have been made with a view to guide county superintendents in their decisions, as well as to indicate some of the principles which will be observed by the superintendent of public instruction in the adjudication of similar cases.

In the particular case under consideration, the board of directors, with unusual unanimity, performed a discretionary act. It is not claimed that this act was illegal or the board was influenced by improper motives. It is not satisfactorily proven that the act was unjust. In our opinion, the evidence does not sustain the county superintendent in annulling the order of the board, and his decision is therefore

REVERSED.

D. FRANKLIN WELLS,

February 15, 1868. *Superintendent of Public Instruction.*

James C. Smith v. District Township of Maquoketa.

Appeal from Jackson County.

1. Trial of Appeal. Mere technical objections should not prevent the fullest presentation of the merits of the case, in the trial of an appeal.
2. Affidavit. The affidavit may be amended when such action is not prejudicial to the rights of any party interested.
3. County Superintendent. May upon appeal create subdistrict.

At the regular semi-annual meeting of the board of the district township of Maquoketa in September, 1867, Jacob Markle and twenty-seven others presented a petition asking that all of that portion of subdistrict number five lying south of the Maquoketa river, be set off into a separate subdistrict. The prayer of the petition was refused, whereupon James C. Smith, one of the petitioners, appealed to the county superintendent, who reversed the action of the board and created a new subdistrict south of the river. From this decision D. F. Farr and E. H. Patterson appealed.

The evidence discloses the following facts: Subdistrict number five is divided by the Maquoketa river into two nearly equal portions, the school-house being situated on the north side of the river. Said river is a navigable stream, the only means of crossing it being the ice in winter and a ferry in summer. It is subject to freshets, and obstructions from ice, so as to be impassable for days in succession. The weight of evidence shows the river to be such an obstruction that children cannot, with reasonable facility, enjoy the advantages of a school on the opposite side from that on which they reside. That this difficulty was recognized by the board is evidenced by the fact that an appropriation of forty dollars was made last summer to support a school in that part of the subdistrict south of the river. Some children have never attended school north of the river, because their parents consider the crossing of the river fraught with danger.

The appellant assigns three errors: The insufficiency of the affidavit of J. C. Smith, and the consequent want of jurisdiction by the county superintendent; that the county superintendent permitted said affidavit to be amended on the day of trial, thus admitting its insufficiency; that the county superintendent divided said subdistrict number five into two subdistricts.

The system of appeals to county superintendents was inaugurated to provide a speedy and inexpensive method of adjusting difficulties arising in the administration of school laws. From the fact that many of

the cases arising are prosecuted by the parties interested without the intervention or assistance of lawyers, no very stringent rules of practice have been adopted. The object of this system of appeals is to promote uniformity in the operation of school laws, and the attainment of substantial justice; and this object should not be defeated by technical objections.

While the affidavit of said Smith was not as full as it is customary to make such papers, it yet had such completeness as enabled the county superintendent to obtain a transcript of the proceedings of the board relating to the alleged grievance; and the ruling of the county superintendent on the first two points is sustained. It is neither intimated nor believed that the irregularities complained of prejudiced the interests of appellants.

The law imposes equal burdens upon all property in the township for contributions to the teachers' fund and the contingent fund, and it contemplates that all the youth of the state shall enjoy as nearly as practicable equal educational facilities. The county superintendent, by his appellate jurisdiction, had power to create the new subdistrict. As by the evidence, the youth south of the river could not with reasonable facility enjoy the advantages of a school on the north side, the county superintendent was justified in interfering with the discretionary powers of the board, and in establishing a new subdistrict south of the river.

AFFIRMED.

D. FRANKLIN WELLS,

February 15, 1868. *Superintendent of Public Instruction.*

S. L. Curry v. District Township of Franklin.

Appeal from Decatur County.

1. County Superintendent. Has no jurisdiction of an appeal until an affidavit is filed.
2. Affidavit. An affidavit is a statement in writing, signed and made upon oath before an authorized magistrate.
3. Notice. The county superintendent should not issue notice of final hearing until both the affidavit and the transcript of the district secretary have been filed in his office.
4. Testimony. Unless obviously immaterial, testimony offered should be admitted and given such weight as it merits.
5. Discretionary Acts. May be reversed on appeal, but should not be disturbed except upon evidence of unjust exercise or abuse.

December 16, 1867, at a special meeting of the board, a vote to change the boundaries of subdistricts so as to form a new subdistrict in accordance with the prayer of petitioners, resulted in a tie. From this virtual refusal to act, S. L. Curry appealed to the county superintendent, who on the 31st of the same month formed a new subdistrict. Appellant alleges in his affidavit that the county superintendent assumed jurisdiction of this case without warrant of law; that there never was "at any time an affidavit or any other statement in said appeal case filed in the office" of the county superintendent; hence the want of jurisdiction.

The "act to provide for appeals," section two, provides that "The basis of proceeding shall be an affidavit, filed by the party aggrieved, with the county superintendent, within the time allowed for taking the appeal." An affidavit is a statement in writing, signed and made upon oath before an authorized magistrate. A county superintendent can have no proper jurisdiction of an appeal case until such affidavit has been filed. A notice of intention to file an affidavit, a verbal complaint, or a petition, is not sufficient to give the county superintendent jurisdiction in appeal cases. The affidavit setting forth "the errors complained of in a plain and concise manner," must be in his hands before he is justified in commencing proceedings. The decision of the superintendent recites that the affidavit was filed December 21, which might be taken as conclusive, if it was not contradicted by the record. The transcript shows that said affidavit was not subscribed and sworn to until December 28, hence we do not clearly see how it could have been filed on the 21st.

December 24, four days before the affidavit was made, and which appellant alleges was never filed with the superintendent, said superintendent

gave notice to the parties that the hearing would take place on the 30th. This proceeding, as an appeal case, was entirely unauthorized by law; and as he commenced proceedings in disregard of the plain provisions of law and without legal jurisdiction, his decision is annulled. It may be said, and not without authority, that as both parties responded to the notice, and came before the superintendent, that he thereby acquired jurisdiction; but we feel unwilling to sanction disregard of law by approving such great irregularities.

Without touching the real merits of the question at issue, the formation of a new subdistrict, which we are willing to leave to the local authorities, we refer briefly to three points of law raised by appellants:

The county superintendent should not issue notice of final hearing until both the affidavit and the transcript of the district secretary have been filed in his office.

Though the change of subdistrict boundaries by the board is a discretionary act, it may be reviewed by the county superintendent, on appeal; but the decision of the board should not be disturbed unless said discretionary power has been abused or exercised unjustly.

The county superintendent should have received the remonstrances offered on trial in evidence, and exercised his judgment as to their weight and value.

REVERSED.

D. FRANKLIN WELLS,

March 26, 1868. *Superintendent of Public Instruction.*

C. S. GORDON v. DISTRICT TOWNSHIP OF BROWN.

Appeal from Linn County.

1. DISTRICT TOWNSHIP. Should not ordinarily contain more than nine subdistricts.
2. COUNTY SUPERINTENDENT. Should not reverse an action of the board which is in accordance with instructions of the superintendent of public instruction.
3. RECORDS. The official record is its own best evidence. Testimony intended to contradict the record should not be admitted.
4. SUBDISTRICT: *Size of.* There are very many serious objections to the formation of small subdistricts.

The board of the district township of Brown, at a meeting held February 8, 1868, and attended by all of the members of the board except one, voted unanimously to redistrict the district township, and to relocate school-house sites in accordance with a decision of the superintendent of

public instruction, rendered January 28, 1868, and in accordance with a plat submitted. From the action of the board in this matter C. S. Gordon appealed to the superintendent, by whom the case was heard March 12, 1868, and whose decision, rendered the following day, reversed the action of the board on the ground of alleged non-compliance with the decision of the superintendent of public instruction, as rendered on the said January 28, 1868, in *Gordon v. District Township of Brown.*

The decision of the superintendent of public instruction above referred to, was provisory. It declared that if the board should promptly make certain changes therein indicated, that the decision of the county superintendent, made November 12, 1867, forming a new subdistrict, should be void; otherwise, in full force and effect. It required that school-house sites should be selected "at or near" certain points named; thus giving the board limited discretion in their location, and full discretion in regard to the boundaries of subdistricts. In one instance, a site was selected about one-fourth of a mile from the point indicated; but as the plat showed that it was at the crossing of two roads, and that it was nearer the center of the subdistrict as established by the board, this variation was approved. The other sites selected by the board did not vary from the points indicated in the decision. The changes made by the board on the said eighth day of February, were submitted to the superintendent of public instruction, who, March 3, gave them his official sanction and approval.

Mr. Gordon's appeal was based principally upon the fact that one of the sites, as explained above, was not at the precise point indicated by the decision of the superintendent of public instruction; and hence, as the board had not strictly complied with the proviso of said decision, the decision of the county superintendent, made November 12, 1867, establishing a new subdistrict, was in full force and effect, and should have been regarded by the board.

In support of its action the board offered in evidence the official approval of the superintendent of public instruction; this, however, was ruled out by the county superintendent, on the alleged ground that it was "*ex parte* testimony" obtained by one party after the inauguration of the appeal, without notice to the other party. In this ruling the county superintendent erred. The decision of the superintendent of public instruction being provisory, it was competent for him to confirm the subsequent action of the board in relation thereto, and to determine whether the location of sites made was, under the circumstances, a sufficient compliance with the decision. The phrase "at or near" implied that there might be a variation from the precise point named, and when this variation was officially approved, it was binding upon the county superintendent.

The provisory decision of January 28, permitted the board to exercise all the discretionary power in redistricting which the law confers. From

their exercise of this power, also, the plaintiff appeals. The record shows that there are now ten subdistricts in Brown district township; but the plaintiff wishes another formed which shall contain only one and one-fourth sections. In our opinion there are serious objections to the formation of small subdistricts. The small number of children and small amount of taxable property which they will usually contain, will insure but a feeble support for the schools. Cheap teachers, short terms of school, and poor schools will inevitably result. Not every man can have a public school in his own immediate neighborhood. It is better that children should go a little farther, and have a good school when one is reached. Except in peculiar circumstances, we doubt whether there ever ought to be more than nine subdistricts in any district township of ordinary size, and it might be better to have only six. A school centrally located on every four or six sections of land, would afford reasonable facilities to all. Even in populous districts, it would be better to increase the size of the schools and have more than one teacher if necessary than to adopt the disastrous policy of subdivision.

The county superintendent in his lengthy argument in support of his decision, dwells upon some slight discrepancies in the secretary's transcript. At a meeting of the board February 8, it appears that a motion was made to "proceed to redistrict," etc. One transcript says this motion carried, the other omits such a statement. The county superintendent alleges that it was carried "by only one vote." Whether it carried or not is under the circumstances entirely immaterial; as a motion was subsequently unanimously adopted, the yeas and nays being called, to adopt a certain plat on which the changed boundaries of the subdistricts were marked, and the school-house sites indicated. This was the important vote of the meeting, and in regard to its adoption there is no question. Even admitting that one man did not vote for it as claimed, there was still left more than the legally required number of votes. But the integrity of an official record cannot be impeached by any such collateral proceeding. It was error to admit evidence contradicting the record.

The board of directors had full discretionary powers in the matter of redistricting the township district, and the manner in which they exercised this power was a proper subject of review by the county superintendent on appeal. At the time the plaintiff's affidavit was filed, the county superintendent had no knowledge that the acts of the board on said 8th day of February had been approved by the superintendent of public instruction, or that they would be so approved; he therefore properly assumed jurisdiction of the case. When, however, the action of the superintendent of public instruction became known, the county superintendent should have been governed by it, and he should have affirmed the action of the board of directors or dismissed the case.

For reasons heretofore given, as well as upon the real merits of the case, and to promote the educational interests of the district township at large, the decision of the county superintendent is

REVERSED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

June 8, 1868.

ELIAS SIPPLE v. DISTRICT TOWNSHIP OF LESTER.

Appeal from Black Hawk County.

1. TESTIMONY. At the hearing of an appeal before the county superintendent it is competent for him, upon his own motion, to call additional witnesses to give testimony.
2. RECORDS. In the absence of the allegation of fraud, testimony to contradict or impeach the records of the district cannot be received.
3. ———. The board may at any time amend the record of the district, when necessary to correct mistakes or supply omissions. And may upon proper showing be compelled by mandamus to make such corrections.

At the regular meeting of the board of the district township of Lester, held September 16, 1867, which was attended by four of the seven members of the board, motions were made and seconded for the creation of two new subdistricts whose boundaries were described in the motions. In regard to the action on these motions the record of the secretary contains merely the word "carried." At a special meeting of the board held February 15, 1868, the action of the board in September in relation to the formation of new subdistricts was "reconsidered" and "rescinded." From the February action Elias Sipple appealed to the county superintendent. During the progress of the hearing, which took place March 20, 1868, the county superintendent called upon one of the four members of the board that attended the September meeting, who testified that he did not vote for the motion to create a new subdistrict. As it thus appeared that the new subdistricts were not established by a vote of a majority of all the members of the board, as required by law, and as said September action was rescinded at a full meeting of the board in February, the county superintendent, considering the formation of the subdistricts illegal and void, dismissed the appeal. From this decision Barney Wheeler appeals.

Appellant alleges substantially that the county superintendent erred as follows: In himself calling a witness to give testimony; in receiving testimony to impeach the district record, which is claimed to be valid and

binding after thirty days; in dismissing the appeal; in not establishing the subdistricts.

The law requires the county superintendent to give a "just and equitable" decision, and as the calling of additional witnesses may sometimes enable him to discharge this duty more faithfully, his action in this respect is sustained.

The second error assigned really includes two distinct points, which will be considered separately; and first, in regard to the impeachment of the district record. The law provides for an annual meeting of the electors of the district township, and for semi-annual and special meetings of the board of directors; also that "the secretary shall record all the proceedings of the board and district meetings in separate books kept for that purpose." It is a general principle of law that "oral evidence cannot be substituted for any instrument which the law requires to be in writing, such as records, public documents," etc. 1 Greenleaf's Evidence, § 86. "It is a well settled rule that, where the law requires the evidence of a transaction to be in writing, oral evidence cannot be substituted for that, so long as the writing exists and can be produced; and this rule applies as well to the transactions of public bodies and officers as to those of individuals." *The People v. Zeyst*, 23 N. Y., 142. In the case of *Taylor v. Henry*, 2 Pick., 397, the supreme court of Massachusetts held that an omission in the records of a town meeting could not be supplied by parol evidence. Chief Justice Shaw, in discussing the case, said that it would be "dangerous to admit such a proof." Mr. Starkie, in his valuable treatise on evidence says: "Where written instruments are appointed either by the immediate authority of the law or by the compact of the parties, to be the permanent repositories and testimony of truth, it is a matter both of principle and of policy to exclude any inferior evidence from being used either as a substitute for such instruments or to contradict or alter them; of principle, because such instruments are, in their own nature and origin, entitled to a much higher degree of credit than that which appertains to parol evidence; of policy, because it would be attended with great mischief and inconvenience, if those instruments upon which men's rights depend were liable to be impeached and controverted by loose collateral evidence." Starkie, part IV, page 995, volume III, 3d Am. Ed.

The reason of the rule upon which the courts agree with such entire unanimity applies with force in the case now under consideration. The records of the district and board meetings contain a statement of the regulations adopted, and the acts done in the exercise of the powers with which the respective bodies are invested by the law. They present to all the citizens of the district township, in a permanent form, certain and definite information which could be obtained, with equal certainty, in no

other way. Memory is defective, but the secretary records the transactions as they occur. The actors change from year to year, but the record is permanent. And though the admission of oral testimony to alter a record or to supply an omission therein might sometimes promote the attainment of justice, the prevalence of such a practice would result in more evil than good. It is held, therefore, that in the absence of alleged fraud the county superintendent errs in admitting parol evidence to contradict or impeach the record of the September meeting of the board.

In regard to the other part of the second point a few words will suffice. The counsel for appellant urges that though the record of the September meeting was imperfect, the lapse of thirty days made the record valid and binding upon the district. It is true that the right to take an appeal to the county superintendent expires after thirty days; but I am unable to see how the lapse of time will validate what was before invalid. The secretary is the proper custodian of the records of the school district, and before the record of the proceedings of the board has been approved or adopted by the board, the secretary may amend them by supplying omissions, or otherwise correcting them. After they have been approved they may be amended and corrected by direction of the board, even after the lapse of thirty days. In Massachusetts a town clerk is permitted to amend the record in order to supply defects, even after a suit involving a question respecting them has been commenced. I am of the opinion that if the secretary or board of directors decline to make necessary corrections in the record, that a party interested may proceed by mandamus to compel the correction. If the record is to be impeached, it must be, in the absence of fraud, by a direct proceeding instituted for that purpose, and not by a collateral or indirect method. *The People v. Zeyst*, 23 N. Y., 147–8.

The district record in this case is not as full as it might with propriety be. The law provides that the boundaries of subdistricts shall not be changed except by the vote of a majority of the members of the board. The record fails to show that this requirement of the law was complied with at the September meeting. The secretary says the motion to redistrict "carried." This is his opinion, but he fails to give the fact upon which it is based. Four of the seven members were present, but he does not say who, or how many voted for the change. Properly this should have been stated. When, however, the district record declares that a motion was "carried," the law will presume that it was carried in accordance with the requirements of the statute; though there is reason to believe that the presumption in this instance is a violent one. It follows that there was no legal evidence that the subdistricts were not established in accordance with law; hence, the conclusion is inevitable

that the county superintendent erred in dismissing the appeal for the cause assigned.

At the commencement of the trial and again during its progress, the defendant moved the county superintendent to dismiss the case on account of the insufficiency of the affidavit. The affidavit of Mr. Sipple is not as full as it is usual to make affidavits in such cases, yet it "set forth the errors complained of" with such plainness and conciseness as enabled the county superintendent to obtain the necessary transcripts, and this is all that the law really requires. Revision, 1860, § 2135. It has not been customary heretofore to enforce any particular form of affidavit, and the county superintendent's ruling refusing to dismiss on defendant's motion is sustained.

As the testimony appears not to have been all in when the case was dismissed by the county superintendent, no opinion can be given in regard to the propriety or necessity of establishing the proposed new subdistricts.

The case is therefore returned to the county superintendent, who will proceed with the hearing, first allowing a reasonable time for the correction of the district record or for the enforcement of its correction should such correction be deemed necessary by either of the interested parties. Should the district record be amended so as to show conclusively that the said subdistricts were not legally formed at the said meeting in September, it will follow that the said subdistricts never had a legal existence, and that the plaintiff could not be aggrieved by the action of the February meeting, hence the county superintendent will determine the case in favor of the appellee. Should said record not be amended, or should it be amended so as to show clearly that said subdistricts were established in all respects in conformity with law, the question of establishing the new subdistricts, or more properly retaining their organization, will be determined upon its merits.

REVERSED.

D. FRANKLIN WELLS,

July 23, 1868. *Superintendent of Public Instruction.*

E. J. Miner v. District Township of Cedar.

Appeal from Floyd County.

1. Contested Election: *Jurisdiction.* The proper method of determining a contested election for school director is by an action brought in the district court.
2. Election: *Evidence of.* The certificate of the officers of the annual subdistrict meeting is the legal evidence of election as subdirector, and as a general rule a board of directors is justified in declining to recognize a person as a member of the board until he produces such certificate.
3. Evidence. Where the law requires the evidence of a transaction to be in writing, oral evidence can be substituted for it only when the writing cannot be produced.

At the regular meeting of the board of the district township of Cedar, in March, 1868, E. J. Miner appeared and filed his oath of office as subdirector of subdistrict number three of said district township, and claimed recognition as a member of the board from said subdistrict. The said Miner failed to present to the board the certificate of the officers of the subdistrict meeting, or any other evidence of his election except his own verbal statement. It was alleged in the board that he was not legally elected. Under these circumstances, the board refused him a seat and recognized his predecessor as holding over. From this order the said Miner appealed to the county superintendent, who, after a full hearing of the manner in which the election was conducted, reversed the order of the board, and directed that the said Miner should be recognized as subdirector of subdistrict number three, and as a member of the board of directors. From this decision an appeal is taken by A. J. Sweet, president of the board. The above are but a small portion of the facts presented in the well arranged transcript of the county superintendent, but yet all that are material to the issues involved.

The case presented by these facts is similar to that of *Ockerman v. District Township of Hamilton*, page 77, School Law Decisions of 1868, and must be governed by the same principles. It was there held that the only proper way of determining a contested election or the right of exercising any public office or franchise, is by an action in the nature of *quo warranto* brought in the district court. It seems unnecessary to repeat the arguments there used. Reference is made to that case as well as to the 19 Iowa, 199; 18 Iowa, 59; 16 Iowa, 369; 17 Iowa, 365; and the other cases there cited. The principle involved in the preceding references was recognized by the county superintendent, when he said

in his decision that "the board of directors has no jurisdiction to inquire into the legality of the election of its members." When this just conclusion was reached, the case should have been dismissed, for the county superintendent can do on appeal only what the board itself might legally have done.

The county superintendent held that as the president of the subdistrict meeting refused to sign a certificate of election for the said Miner, that the board might receive other evidence of his election. In this the county superintendent departed from well established legal principles. The school law provides that at the meeting of the electors of the subdistrict on the first Monday in March, "a chairman and secretary shall be appointed, who shall act as judges of the election, and give a certificate of election to the subdirector elect." It is a well settled rule, that where the law requires the evidence of a transaction to be in writing, oral evidence cannot be substituted for it when the writing can be produced; and this rule applies alike to the transactions of public bodies, officers, and individuals. This question was discussed at some length in the case of *Sipple v. District Township of Lester.* Some of the references made are: 1 Greenleaf's Ev., § 86; *People v. Zeyst*, 23 N. Y., 142; 2 Pick., 397; and Starkie on Ev., Part IV., p. 995, volume III, 3d Am. Ed.

There can be no doubt that the law contemplates that the certificate of the officers of the subdistrict meeting shall be the legal passport to a seat in the board, and that, as a general rule, a board of directors is justified in declining to recognize a person as a member of the board until such certificate is produced. If the certificate has been given and lost, the accident may be remedied by other testimony. If it has been illegally withheld the officer may be coerced by mandamus to furnish it. If it has been fraudulently given, the law still provides a remedy.

By the light of the previous principles, it is evident that when, under the circumstances, the county superintendent proceeded to investigate the rights of the plaintiff as a school director, he exceeded his jurisdiction, and that his decision must therefore be overruled. The law requires that the plaintiff, Miner, shall seek his remedy in the courts. The decision of the county superintendent is therefore reversed and the case dismissed.

REVERSED.

D. FRANKLIN WELLS,

July 29, 1868. *Superintendent of Public Instruction.*

Chiles Moorman v. District Township of Belmont.

Appeal from Warren County.

1. School-house: *Removal of.* A vote of the electors of a subdistrict to remove a school-house will not compel the board to act affirmatively in relation thereto.
2. Jurisdiction. An application for an appeal filed within thirty days from the act of the board complained of will not give the county superintendent jurisdiction of the case. The appeal must be taken by affidavit.

This appeal was taken to the county superintendent to secure the removal of the school-house in subdistrict number eight, of this district township. At the subdistrict meeting in March, 1868, the electors voted by a large majority that the removal should be made. At the semi-annual meeting of the board held March 16, 1868, a motion to remove the school-house in accordance with the vote of the subdistrict was lost; and from this action of the board the plaintiff, by affidavit, filed with the county superintendent May 9, 1868, took an appeal. Previous to this, that is on the 28th of March, the plaintiff had filed with the county superintendent an "application for an appeal." The county superintendent assumed jurisdiction in the case, and after a full hearing reversed the decision of the board and ordered the removal of the house. To this decision the appellant takes exception.

The power to locate the site for a school-house is vested in the board of directors, and the power to "fix the site" carries with it the power to relocate the site. *Vance v. District Township of Wilton*, 23 Iowa, 408. Hence the vote of the subdistrict electors must be considered as advisory rather than mandatory.

Exception was taken to the action of the county superintendent on the ground that the appeal was not taken within the thirty days required by law, and the record shows that nearly two months had elapsed before the filing of the affidavit, which by law is made the basis of appeal. It has been decided in previous cases that the right of appeal can be enjoyed only within thirty days of the rendition of the decision complained of, and that the appeal can be instituted only by filing an affidavit with the superintendent. *Curry v. District Township of Franklin.* Following the line of these decisions we are compelled to hold that the county superintendent had no proper jurisdiction of this case, and that his action thereon is void.

If it is suggested that an "application for an appeal" was made before the expiration of thirty days from the board's decision, it must be replied

that the law recognizes no such step in the proceedings. The law distinctly provides that the basis of appeal shall be "an affidavit, filed by the party aggrieved with the county superintendent within the time allowed for taking the appeal." The application for an appeal is all very well, provided the affidavit itself is filed within the time allowed by law; but the filing of the "application for an appeal" is an entirely superfluous and unnecessary proceeding.

As the case was not properly before the county superintendent we are compelled to set aside his decision, and leave the removal of the schoolhouse to the discretion of the board.

REVERSED.

D. FRANKLIN WELLS,

September 11, 1868. *Superintendent of Public Instruction.*

Z. W. REMINGTON v. DISTRICT TOWNSHIP OF BOOMER.

Appeal from Pottawattamie County.

1. JURISDICTION. The county superintendent does not have jurisdiction of cases involving a money demand.
2. SCHOOL ORDERS. When improperly issued by the board, the proper remedy is an injunction from the civil courts.

The case presented by the record is this: On the 12th day of October, the board of Boomer district township met in special session and made a settlement with one L. S. Axtell, who was the contractor for the erection of certain school-houses in said district township. From the action of the board, Z. W. Remington appealed to the county superintendent. The superintendent dismissed the appeal upon the ground that the settlement with Axtell was for a money demand, and therefore involved a question over which he could exercise no jurisdiction. Remington again appeals.

If there was anything wrong in the action of the board issuing orders in favor of Axtell for the payment of his claim for building the schoolhouses that would render them invalid, plaintiff's remedy, if any, would have been by injunction to restrain the payment of such orders, or by some other proper action in the civil courts, and not by appeal to the county superintendent, as the latter tribunal is not clothed by the statute with authority to inquire into or determine the validity of school orders. The county superintendent, therefore, very properly decided to dismiss the appeal, and his order in the case is hereby

AFFIRMED.

A. S. KISSELL,

May 17, 1870. *Superintendent of Public Instruction.*

W. D. Peck *et al.* v. District Township of Polk.

Appeal from Jefferson County.

1. Subdistricts. Should be, if possible compact and regular in form. In well populated district townships, two miles square is considered a desirable area for each subdistrict.
2. School-house Site. It is important that a school-house site be located on a public road, and as near the center of the subdistrict as practicable.

It appears from the transcript in this case that the board, on the presentation of a petition from the majority of the inhabitants of subdistrict number eight, of said district township, issued an order attaching a strip on the northeast from subdistrict number seven to number eight, relocating the school-house site, and arranging for the removal of the school-house from the present site to said new location. From this action of the board an appeal was taken to the county superintendent, who sustained the action of the board, and from his decision an appeal is taken to this tribunal.

The trial before the county superintendent developed that the board have in contemplation the redistricting of the entire township into subdistricts two miles square, and that the order providing for the change of boundaries in subdistrict number eight, is the initiatory step in that direction. The subdistrict in question, previous to their order had very irregular boundaries; and except that the district is too large for convenience without further change in the boundaries, there would seem to be every reason for attaching the strip from number seven. That being attached, the change of location and the removal of the school-house to a site occupying the geographical center of the subdistrict with its changed boundaries, must follow, of course. Besides this, there seems to be the additional good reason for the change of location for the school-house site; the present site is not on a public road; the one in prospect is, and as all the territory is in a condition to be easily and rapidly settled, the new site will, with the additional change in contemplation, be the exact geographical center of the subdistrict.

The action of the board in this case is manifestly of a discretionary character, and I can see nothing in the testimony that would induce the belief that they have in any way exceeded their prerogative, or abused their discretion. The decision of the county superintendent is therefore

Affirmed.

A. S. KISSELL,

February 4, 1871. *Superintendent of Public Instruction.*

W. P. Davis v. District Township of Madison.

Appeal from Fremont County.

1. Contracts. All contracts require the approval of the board.
2. School Funds: *Disbursement of.* The treasurer is the proper custodian of all funds, and can legally pay them out only upon orders specifying the fund upon which they are drawn and the specific use to which they are applied.
3. Subdirector. The subdirector may expend money in his subdistrict only in the manner authorized by the board.
4. Claims. Just claims against the district can be enforced only in the courts of law.
5. Subdistrict. A subdistrict is not a corporate body, and has no control of any public fund.

The electors of the district township of Madison, on the eleventh day of March, 1871, voted a tax of two and one-half mills on the taxable property of the district township for school-house purposes, and directed that three hundred dollars of the amount thus raised should be used for the erection of a school-house in subdistrict number nine.

March 20, 1871, W. P. Davis, subdirector of subdistrict number nine, was appointed a committee to build a school-house in said subdistrict. The house having been completed, at a special meeting of the board held June 1, 1872, it was moved that the report of the committee be received, and the school-house be accepted; also that the secretary be instructed to draw an order on the treasurer for three hundred dollars, for subdistrict number nine. Both motions were lost, from which action the said W. P. Davis appealed to the county superintendent, who on the 9th day of August, 1872, reversed the action of the board. The district township, through its president, W. H. Gandy, appeals.

The history of this case very fully illustrates the loose and irregular manner in which school officers too frequently transact official business. Section 15 of the School Laws provides that the board of directors "shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district, but before erecting any school-house they shall consult with the county superintendent as to the most approved plan of such building."

If the contract is made by a subdirector or committee of the board, it should in all cases be approved by the board before work is commenced.

A misapprehension often exists as to the manner in which school funds should be disbursed. The treasurer is the proper custodian of all funds belonging to the district township, and the law provides that he "shall pay no order which does not specify the fund on which it is drawn, and the

specific use to which it is applied," that is, for work done, material furnished, or the like.

The board are also required to "audit and allow all just claims against the district, and no order shall be drawn on the district treasury until the claim for which it is drawn has been so audited and allowed." This rule applies equally where funds are voted by the district township for the purpose of building school-houses in particular subdistricts, also where taxes have been raised on the property of subdistricts in accordance with the proviso of section twenty-eight. Such funds, or so much of them as may be required to carry out the vote of the electors, should be devoted to the specific object for which they were voted, but the disbursement should in all cases be under the direction and authority of the board. Boards have no authority to give subdirectors money to use in their subdistricts for building school-houses or any other purpose, nor subdirectors to use money so received. A subdistrict is not a corporate body and has no control of any public fund.

If Mr. Davis has a just claim against the district township of Madison which the board refuse to allow, or if the board refuse to apply the amount voted by the electors to the specific object for which it was designed, viz., the erection of a school-house in subdistrict number nine, the civil courts only can furnish a means of redress.

REVERSED.

ALONZO ABERNETHY,

October 30, 1872. *Superintendent of Public Instruction.*

J. D. CALDWELL v. STEPHEN PEEBLES, COUNTY SUPERINTENDENT.

Appeal from Mills County.

1. REVOCATION OF TEACHER'S CERTIFICATE. A teacher's certificate can be legally revoked only upon proof of charges of which he has had personal notice, and against which he has had the opportunity to make his defense.
2. ———. A person addicted to the use of intoxicating liquors who even occasionally becomes intoxicated is not likely to promote correct moral teaching in the public schools by his example, nor to possess such moral character as to entitle him to a teacher's certificate.

Complaint having been made to the county superintendent that J. D. Caldwell, a teacher, was addicted to the use of intoxicating liquors, an examination of the charges was made May 10, 1873, as provided by law, the result of which was the revocation of Mr. Caldwell's certificate. Mr. Caldwell appeals.

We need not comment upon the testimony in the trial, since the county superintendent admits that the specifications contained in the complaint were not sustained. Facts, however, were developed incidentally, in the examination of witnesses, apart from the direct issues involved, to satisfy the county superintendent that the defendant does not possess a good moral character, and we are not sure but his conclusions are properly deducible from the evidence.

The law, however, providing for the revocation of certificates, requires that it shall only be "after an investigation of facts in the case, of which investigation the teacher shall have personal notice, and he shall be permitted to be present and make his defense." In this instance, certain charges were preferred in an information, of which the teacher had due notice, and, as it appears, successfully defended himself against the charges made, and there rested his case.

It is, perhaps, doubtful if the superintendent has the authority to revoke a certificate upon evidence incidentally developed in the trial, however damaging in its nature, the substance of which was not contained in the original notice, and against which no defense was attempted.

We fully agree with the superintendent, that a person addicted to the use of intoxicating liquors, who even occasionally becomes intoxicated, and who is in the habit of visiting disreputable beer saloons, does not possess that degree of moral character to entitle him to a teacher's certificate under our statute. We cannot too highly commend the efforts of county superintendents to promote correct moral teaching in the public schools through the example of the teacher.

Disqualifications of this nature should be fully proved and in the manner prescribed by law; and we reluctantly set aside this decision, believing that the superintendent was actuated by worthy motives, and did the act solely with a view to promote the good of the schools, and in the conscientious discharge of a public duty.

REVERSED.

ALONZO ABERNETHY,

May 31, 1873. *Superintendent of Public Instruction.*

W. J. Moody v. H. H. Burrington, County Superintendent.

Appeal from Bremer County.

1. Revocation of Teacher's Certificate. The county superintendent may refuse to entertain a petition for the revocation of a teacher's certificate.
2. Appeal. An appeal may be taken from the refusal of the county superintendent to investigate charges brought against a teacher.

A petition containing charges against a teacher was presented to H. H. Burrington, county superintendent, asking an investigation of the charges, and the revocation of her certificate. The county superintendent refused to make the investigation as requested by the petitioners and from this action W. J. Moody appeals.

The question whether an appeal will lie from the refusal of the county superintendent to investigate charges brought against a teacher, has not been to our knowledge before determined. Since it is held that an appeal may be taken from an action of the board refusing to perform a discretionary action, we see no reason why an appeal will not lie from an act of the county superintendent of like nature.

In the case before us, statements testifying to the moral character and good reputation of the teacher are made by reliable and disinterested parties, who have been intimately acquainted with her for several years past; and it is believed that, in no instance, is the judgment and discretion of a local tribunal entitled to more consideration than in this case.

Affirmed.

ALONZO ABERNETHY,

July 10, 1873. *Superintendent of Public Instruction.*

J. W. Randall v. District Township of Vienna.

Appeal from Marshall County.

1. School-house: *Removal of.* The board may legally remove a school-house from one subdistrict to another only by vote of the electors.
2. ———: ———. When the electors have voted to remove a school-house from one subdistrict to another the board must execute such vote, if in accordance with law; from their action in so doing no appeal can be taken.

At the district township meeting held on the second Monday in March, 1873, it was voted to remove the school-house situated in subdistrict number four, into subdistrict number three. On the seventeenth day of

March the board ordered the removal of the school-house, in accordance with said vote of the electors. From this action appeal was taken to the county superintendent, who reversed the action of the board. The district township, through its president, appeals.

Section seven, School Laws of 1872, provides that the electors shall have the power "to direct the sale, or other disposition to be made of any school-house;" also "to vote such tax, not exceeding ten mills on the dollar in any one year, on the taxable property of the district township, as the meeting shall deem sufficient for the purchase of grounds and the construction of the necessary school-houses for the use of the respective subdistricts."

Section fifteen provides that the board "shall make all contracts, purchases, payments and sales necessary to carry out any vote of the district."

Section sixteen provides that the board "shall fix the site for each school-house."

From the law as above quoted we understand that the electors may vote a tax for the erection of a school-house in any particular subdistrict, or may direct the removal of one already built, from a subdistrict, and that the board determine the site within a subdistrict, but have no authority to remove a school-house from a subdistrict without affirmative action of the electors, such action, however, being taken, the board must execute their vote, if in accordance with law.

From the action of the board in thus executing the vote of the electors no appeal can be taken. If the vote of the electors is contrary to law, its execution may be prevented by injunction; if unwise, the electors themselves must bear the consequences.

REVERSED.

ALONZO ABERNETHY,

July 11, 1873. *Superintendent of Public Instruction.*

James Bunn v. District Township of Douglas.

Appeal from Ida County.

1. Contracts. The district township is bound by the contract of the subdirector when made according to instructions of the board.
2. ——. If a subdirector enter into a contract on behalf of the district, without authority of the board, he does so at his own risk; such contract is not binding upon the district unless approved by the board.
3. Rules and Regulations. The power to prescribe rules and regulations for the government of the board is not a function of the electors.
4. ———. A rule adopted by the board, and not a provision of law, may be modified at the option of the board.

A contract for furnishing the school-houses in subdistricts number one and two with new seats, was approved by the board. The county superintendent, upon appeal, affirmed the action of the board, and James Bunn appeals.

It is claimed by the appellant that the contract was made without authority from the board; that new seats could not be legally purchased without a vote of the electors; that by rule of the board public notice should be given before making any contract, except with teachers.

The district township is bound by the contract of the subdirector when made and entered into according to the specific instructions and directions of the board. *Thompson v. Linn*, 35 Iowa, 361.

If a subdirector enters into a contract on behalf of the district, without being authorized by the board, he does so at his own risk; such contract is not binding upon the district unless approved by the board; being approved, however, the district becomes responsible for the performance of the contract on its part. Affirmative action of the electors is not required by law before the board can procure new seats for a school-house.

It appears from the transcript that the rule mentioned was adopted and prescribed by the district township meeting, and not by the board; the power to prescribe rules and regulations for the government of the board, except as specifically named in the law, is not a function of the electors when assembled at the district township meeting. Any rule adopted by the board, and not a provision of law, may be modified or disregarded at the option of the board.

Affirmed.

ALONZO ABERNETHY,

December 2, 1873. *Superintendent of Public Instruction.*

D. K. Taylor v. Independent District of Eldon.

Appeal from Wapello County.

1. Appeal. Appeal may be taken from an action of the board which authorizes the making of a contract, but not from a subsequent action or order complying with the terms of a contract previously made, nor from an action authorizing the issuance of an order in payment of a debt contracted by previous action of the board.

2. ———. A case whose sole purpose is to determine the validity of an order on the district treasury, or the equity of a claim, cannot be entertained on appeal to the county superintendent; the courts of law alone can furnish an adequate remedy.

From the transcript it appears that on the 3d day of December, 1873, the board passed an order authorizing the payment of five per cent commission for negotiating the district bonds, and on the same day another authorizing D. P. Stubbs to negotiate said bonds. On the 3d day of February, 1874, the board passed an order instructing the president and secretary to draw an order for $90 on the district treasury in favor of said D. P. Stubbs, for services rendered in negotiating said bonds, in accordance with the previous action of the board on December 3, 1873. From the action of the board in issuing said order of $90 this appeal was taken.

The county superintendent dismissed the case, on the ground that it was an action authorizing the payment of money, and a decision thereon would be equivalent to rendering a judgment for money, which is prohibited by the provisions of section 1836. D. K. Taylor again appeals.

Appeal may be taken from any action of the board which authorizes the making of a contract, but not from a subsequent action or order complying with the terms of a contract previously made, or from an action authorizing the issuance of an order in payment of a debt contracted by a previous action of the board.

The order appealed from in this case is not a new action of the board, but a necessary result of the order of December 3, 1873. If the first action was legal and proper, the last is both proper and necessary, the services having been performed. Any interested party might have appealed, at the proper time, from the action of December 3, authorizing the payment of five per cent commission for negotiating bonds or authorizing the appointment of an agent therefor. But the time for an appeal, thirty days, having expired, appeal cannot now be taken from the subsequent action, which is simply carrying out their previous action, and the terms of the contract made thereunder.

To determine the validity of an order on the district treasury, or the equity of a claim, is equivalent to the rendition of a judgment for money, and a case whose sole purpose is to determine this question cannot be entertained on appeal. The courts of law alone can furnish an adequate remedy, if the law has been violated, or the interests of the district have suffered by the making of contracts or the issuing of orders for money on the treasury.

AFFIRMED.

ALONZO ABERNETHY,

May 5, 1874. *Superintendent of Public Instruction.*

A. BEARD *et al.* v. DISTRICT TOWNSHIP OF WASHINGTON.

Appeal from Ringgold County.

1. SUBDISTRICT BOUNDARIES. Subdistrict boundaries can be changed only by affirmative vote of a majority of all the members of the board.
2. APPEAL. Appeal will not be entertained from the action of the board in rescinding a previous illegal action.

The board of the above named district consists of four members. On the 24th day of January, 1874, three members of the board met, pursuant to notice, for the purpose of forming a new subdistrict to consist of sections 27, 28, 33 and 34. Upon motion to establish said subdistrict, two of the members voted in the affirmative and one in the negative, by this action the subdistrict was considered as formed, and was so entered upon the record. On February 14, the board met pursuant to notice, for the purpose of reconsidering their action of January 24. Upon motion that the action establishing said subdistrict be annulled, three members voted in the affirmative, and one in the negative. From this action appeal was taken to the county superintendent, who simply reversed the action of the board. I. F. Howell *et al.* appeal to the superintendent of public instruction.

Section 1738 provides that the boundaries of subdistricts shall not be changed, except by a vote of the majority of the board. Therefore the subdistrict in question was not legally established by the action of the board of January 24, and their subsequent action relative thereto may properly be considered as simply correcting the records of the meeting. Neither would the action of the county superintendent in reversing such action have the effect to establish the subdistrict.

Since the action of the board was entirely proper under the circumstances in making such correction, the decision of the county superintendent is hereby

REVERSED.

ALONZO ABERNETHY,

June 4, 1874. *Superintendent of Public Instruction.*

E. Watson v. District Township of Exira.

Appeal from Audubon County.

1. Punishment. The punishment of a pupil with undue severity, or with an improper instrument, is unwarrantable, and may serve in some degree, to indicate the animus of the teacher.
2. ———. In applying correction, the teacher must exercise sound discretion and judgment and should choose a kind of punishment adapted not only to the offense, but to the offender.

Charges were preferred against E. Watson, a teacher in the schools of the district above named, for harsh and unreasonable punishment of a pupil, and upon investigation the teacher was discharged. From this action of the board he appealed to the county superintendent, who reversed their action, and the district appeals.

From the evidence it appears that the pupil upon whom the punishment was inflicted was a boy thirteen years of age, and that the offense was such that punishment was deserved. The instrument selected for inflicting punishment was a hickory stick, three-fourths of an inch in diameter at one end, and one-half inch at the other, and fifteen or eighteen inches long. The punishment was inflicted by striking upon the palm of the hand from eight to twelve strokes. It appears that the boy's hand was thereby disabled for some days.

It is alleged by the teacher that the punishment was inflicted for the good of the school, and that it was without malice on his part. We consider the selection of such an instrument for the punishment of a pupil injudicious, unwarrantable, and dangerous, and that consequences might be fraught with the gravest results, and that such selection may serve in some degree, to indicate the animus of the teacher.

Reversed.

ALONZO ABERNETHY,

June 6, 1874. *Superintendent of Public Instruction.*

Sanford Harwood v. Independent District of Charles City.

Appeal from Floyd County.

1. Punishment: *Right to inflict upon pupils.* The right of the parent to restrain and coerce obedience in children applies equally to the teacher, or to any one who acts in *loco parentis.*
2. Rules and Regulations. Boards of directors and their agents, the teachers, may establish reasonable rules for the government of schools and the control of pupils.
3. ———. The teacher has the right to require a pupil to answer questions which tend to elicit facts concerning his conduct in school.
4. ———. The pupil is answerable for acts which tend to produce merriment in the school or to degrade the teacher.
5. ———. Open violation of the rules of the school cannot be shielded from investigation under the plea that it invades the rights of conscience.
6. Board of Directors. The board should be sustained in all legitimate and reasonable measures to maintain order and discipline, to uphold the rightful authority of the teacher, and to prevent or suppress insubordination in the school.

This case involves the right of a teacher to require a pupil to answer questions concerning his conduct in school, or to testify against himself.

Burritt Harwood, a member of the high school department, having broken certain rules of the school, was suspended by the superintendent for refusing to answer a question relating thereto. The pupil's father petitioned the board to restore the pupil. The board having investigated the facts adopted the following:

"Resolved, That the school board sustain Prof. Shepard in his suspension of Burritt Harwood, provided Burritt Harwood be reinstated if he answer the question, for the refusal to answer which he was suspended, subject to such further action as may be taken by the principal or school board for making and circulating the caricature." The president and four other members voted for, and one against the resolution. From this action of the board, S. Harwood appealed to the county superintendent, who reversed their action. The board, through their president, appeals.

The power of the parent to restrain and coerce obedience in children cannot be doubted, and it has seldom or never been denied. This principle applies equally to the teacher or to any one who acts in *loco parentis.* Boards of directors and their agents, the teachers, may establish all reasonable and proper rules for the government of schools, and to control the conduct of pupils attending the same. "Any rule of the school

not subversive of the rights of the children or parents, or in conflict with humanity and the precepts of divine law, which tends to advance the object of the law in establishing public schools, must be considered reasonable and proper." *Burdick v. Babcock*, 31 Iowa, 562.

The superintendent had occasion to leave the high school in charge of his assistant while he should attend to official duties elsewhere. On his return about 4 P. M. the assistant reported that there had been much disorder on the part of some of the pupils, and that she had required several of the pupils to remain and report their misdemeanors to the superintendent. Burritt Harwood being called upon, said in substance: I have two misdemeanors to report; I threw snow into the lower hall during recess, and I passed a piece of paper across the aisle to my brother's desk. Both are recognized as violations of the rules of the school. The nature and magnitude of the first are readily discernible, and need no further investigation; not so of the second; much depends upon the character of the "piece of paper," whether simply blank paper or containing writing or other marks; being asked to state the nature of the paper, he at first answered evasively. Being further questioned, he replied that it was "pictorial," that it was a "burlesque or caricature," that "it represented the school-house and some person or persons," that "the person or persons represented were connected with the school." The further question, "whom he had intended to burlesque," after some hesitation, he declined to answer. For this act of disobedience he was suspended.

The question which he refused to answer appears to differ in no essential feature from those previously answered. By it the teacher simply sought to discover an additional fact in connection with the case. If he had a right to ask the former he had the latter. If there is any reason why the pupil had the right or should claim the privilege of declining to answer the last, he should have stated it. Certainly no good reason appears from the nature of the offense, and the degree of punishment which it merited depended upon the information which the teacher sought to obtain by this and the previous question. If the paper contained simply the solution of a problem or something connected with his lesson, it merited one degree of punishment; if its purpose was to create merriment among the pupils, thus diverting their attention from their studies, it required another degree; if by it the pupil sought to bring ridicule upon a teacher, to the prejudice of the good order and government of the school, still another; each would be a violation of the rules, but not each equally punishable. The claim of appellee that it was an attempt to pry into the secrets of the heart, and was a violation of the right of conscience, is scarcely sustained by the facts. The question "whom did you intend to represent," is essentially equivalent to "whom did you represent." Its

purpose evidently was not to find out the thought or intent, but the act of the pupil. The question was simply what was the character of the picture drawn and circulated to the disturbance of the school. It does not appear how the rights of conscience would be violated in answering the question. It may be true that the picture itself, if produced, would furnish the best evidence, but the teacher clearly had the right, in its absence, and knowing nothing of its nature beyond what the pupil had already revealed, to seek this information directly and immediately by proper questions. Nor can the pupil shield himself under the provision of the law that a prisoner at the bar cannot be compelled to answer questions which will tend to render him criminally liable or expose him to public ignominy. He is, in no proper sense, accused of crime before a court of law, authorized to sit in judgment under a criminal code.

The picture, which was afterward produced, reveals anything but a right spirit in the pupil. Probably no one who has seen it doubts that it is a coarse caricature of the superintendent and his assistant. His refusal to answer was evidently not that he could not conscientiously do so, nor that it would tend to criminate himself, but was a deliberate act of insubordination. All the attendant circumstances, the evasive and studied replies to the superintendent's questions, the caricature itself, and its circulation through the school during the absence of the superintendent, together with a previous malicious caricature of the same nature, all reveal a disregard for the regulations of the school, the respectful conduct due from a pupil, and an *animus* toward the teacher anything but proper.

In our opinion unnecessary stress was laid, in the trial before the superintendent, upon the technical ground of suspension by the superintendent. The board having had the whole subject under investigation, including statements of the offenses from both the superintendent and the pupil, sustained the superintendent, or in other words, suspended the pupil conditionally from the school, as they probably had a right to do for any one of the offenses named. This being a discretionary act, due weight must be given to such action by an appellate tribunal; especially should the board be sustained in all legitimate and reasonable measures to maintain order and discipline, to uphold the rightful authority of the teacher and to prevent or suppress insubordination in the school.

REVERSED.

ALONZO ABERNETHY,

June 8, 1874. *Superintendent of Public Instruction.*

T. J. Rook v. District Township of Liberty.

Appeal from Clarke County.

School-house Taxes. All taxes voted by the district township meeting must be apportioned among the subdistricts. Any part of the tax voted by the subdistrict meeting which the district township neglects or refuses to grant, must be certified and levied upon the subdistrict. The board have no option but to obey the requirements of the law.

Under the provisions of section 1778, School Laws of 1874, the electors of subdistrict number six, of the above named district township, voted to raise the sum of four hundred dollars for the erection of a school-house; the sum was properly certified to the district township meeting, which refused to grant the request. The board of directors certified the amount to the board of supervisors, to be levied directly upon the subdistrict. From this action appeal was taken to the county superintendent, who affirmed the action of the board. T. J. Rook appeals.

The errors alleged to have been committed are: That the township electors neglected or refused to grant the request of the electors of subdistrict number six; and that the board refused to apportion the amount voted by the subdistrict among the subdistricts of the township.

It is wholly discretionary with the township electors whether such requests are granted or not; from their action no appeal can be taken. If they vote to grant such request, the amount must be apportioned by the board among the subdistricts of the township; if they neglect or refuse to grant it, the amount must be certified to the board of supervisors, to be levied directly upon the subdistrict. Section 1778, School Laws of 1874.

The board have no option in such case, it is their duty simply to obey the requirements of the law.

Affirmed.

ALONZO ABERNETHY,

October 5, 1874. *Superintendent of Public Instruction.*

JOHN S. DAVID v. INDEPENDENT DISTRICT OF BURLINGTON.

Appeal from Des Moines County.

1. ATTENDANCE. Every person between the ages of five and twenty-one years has the right to attend school in the district in which he resides, regardless of considerations relating to race, nationality, the holding of property, or the payment of taxes.
2. ———. The payment of school taxes does not entitle nonresidents to school privileges.
3. ———. The board have authority to determine when, and upon what terms, nonresident pupils may attend the schools of their district.

This appeal is brought to compel the board of the independent district of Burlington to admit into the public schools of said district appellant's children, without payment of tuition, on the ground that he is a large taxpayer in the district; the county superintendent having affirmed the action of the board in refusing to admit them.

The appellant resides about a mile beyond the limits of the independent district of Burlington, and near the school in his own district, but he claims that this school is not of suitable grade for his children.

The law requires the board to provide school facilities for all the children in their own district, and contemplates that they shall, in all cases, determine whether children who are not residents shall be permitted to attend the schools thereof, and upon what terms. Section 1793.

It is claimed by the appellant that his children are entitled to attend school in the independent district of Burlington without the payment of tuition, for the reason that he owns property in said independent district and pays taxes thereon; and if the payment of taxes could ever entitle a person to such privileges, it doubtless would in this case, as he introduces the certificate of the county auditor to show that his school taxes for 1874 were $406.08. There is, however, no provision of law upon which to base such claim, nor would such provision well accord with the spirit of our laws relating to public schools. These laws are founded upon the broad principle that every person in the state between the ages of five and twenty-one years, is entitled to the privilege of attending the public schools. This principle is wholly unencumbered by any consideration relating to race, nationality, the holding of property, or the payment of taxes.

To prevent confusion and the over-crowding of particular schools, it is necessary to point out what school each pupil has the right to attend. A more equitable rule could not have been devised, than that which prescribes that the pupil may attend school in the district in which he resides.

The simplicity and equity of this rule are apparent. Every person has one place of residence, and no more; this place of residence is generally determined without difficulty, and is not usually abandoned for trivial causes. To introduce any conditions into the laws dependent upon property considerations, would be to outrage the fundamental principles of our free school system.

To further promote the convenience of the people, and to give elasticity to the rule, the board may, when circumstances require, permit nonresident pupils to attend the schools of their district.

AFFIRMED.

ALONZO ABERNETHY,

February 20, 1875. *Superintendent of Public Instruction.*

A. B. REED *et al.* v. DISTRICT TOWNSHIP OF UNION.

Appeal from Mahaska County.

1. SUBDISTRICTS. Other things being equal, both territory and school population should be about equally divided among the subdistricts of a district township.
2. ———. One subdistrict should not differ greatly from the average subdistrict of the district township both in territory and school population.

The action of the board in changing subdistrict boundaries was affirmed by the county superintendent. From this decision A. B. Reed appeals.

Previous to the action of the board from which appeal was taken, subdistrict number seven comprised two sections of land, upon which reside about forty persons of school age. The board added three sections from subdistrict number three, upon which reside some thirty pupils, leaving but three sections and about twenty-two pupils.

It is claimed that by this increase of area in subdistrict number seven to five sections, and the consequent increase of pupils to seventy, a portion of the latter are deprived of school privileges. This leads to a consideration of the proper basis and manner of dividing a district township into subdistricts. It would seem, other things being equal, that both territory and school population should be about equally divided among the subdistricts of the district township. When the population is not uniformly distributed, which is generally the case, it would appear that no one subdistrict should have an excess over the average subdistrict of the district township, both in territory and in school population; nor should any one subdistrict lack both in territory and in school population, unless by reason of some controlling circumstance. The location of public roads, streams or any other obstruction, should always be taken into consideration. In this case, area and school population are

the only essential elements. The average area of a subdistrict in the township is four and one-half sections.

The school population, according to the last annual report of the county superintendent, averages 57.5 to each subdistrict. Hence, we find that subdistrict number seven lacked both in area and school population, and that its boundaries should have been enlarged; but we also find that the subdistrict from which territory was taken was reduced below the average, both in school population and in area, while the subdistrict thus enlarged is in excess in both.

We trust that the board will as soon as practicable remove these inequalities by a redivision of the entire district township into subdistricts. Questions as to the validity of the action of the board are also raised, but we do not find that they have in any manner acted contrary to the requirements of law.

AFFIRMED.

ALONZO ABERNETHY,

June 21, 1875. *Superintendent of Public Instruction.*

J. W. HUBBARD v. DISTRICT TOWNSHIP OF LIME CREEK.

Appeal from Cerro Gordo County.

1. APPEAL. The execution by the board of the vote of the electors upon matters within their control, is mandatory, from such action of the board no appeal can be taken. If such action is tainted with fraud, an application to a court of law is the proper remedy.
2. BOARD OF DIRECTORS. The board, though not bound by a vote of the electors directing the precise location of a school-house site, are required to so locate it as to accommodate the people for whom designed.
3. ———. If in the selection of a site the board violate law or abuse their discretionary power, their action may be reversed on appeal.
4. ———. An illegal action may be corrected by application to a court for a writ of certiorari.

The electors of the district township voted a tax to build a school-house on what is known as the Simons road, near where it crosses the Central railroad. On a separate motion, the board were instructed to sell the school-house known as number three. In accordance with the first mentioned action, the board located a school-house site on said road, fifty feet from said crossing. From this action appeal was taken, the appellant claiming it to be a relocation of the site known as number three, and that such action was with the express intention of selling the school-house and abandoning the site thereof. The county superintendent

reversed the action of the board. From this decision the district township appeals.

The district township coincides with a congressional township in boundaries and extent, and is comprised in one subdistrict. It is claimed that the action of the district township meeting did not represent the wishes of the people; that there are ninety-five voters in the district, and but twenty-seven were present at such meeting; also that in the location of the site the board did not consult the convenience of the people.

Section 1717, School Laws of 1874, provides that the electors of the district, when legally assembled at the district township meeting, shall have power "to direct the sale or other disposition to be made of any school-house, or site thereof, and of such other property, personal and real, as may belong to the district."

Section 1723 provides that the board "shall make all contracts, purchases, payments, and sales, necessary to carry out any vote of the district."

Section 1724 provides that the board "shall fix the site for each school-house, taking into consideration the geographical position and convenience of the people of each portion of the subdistrict."

The execution of the vote of the electors by the board is mandatory, from their action in so doing no appeal can be taken. In case such action is in any manner tainted with fraud, an application to a court of law is the proper remedy.

The power to locate school-house sites is vested originally in the board. Although the board have authority to locate school-house sites, yet money legally voted by the electors for a specific purpose, must be expended in accordance with such vote; if voted to erect a school-house in a certain subdistrict, it cannot legally be used to build a school-house in another. While any directions of the voters attempting to locate precisely a school-house site, are void, yet the board is bound so to locate it as to accommodate the people for whom designed, in the absence of such instructions the board may exercise more widely their discretion in fixing school-house sites.

If in the performance of this duty they violate law, act with manifest injustice, or in any manner show an abuse of discretionary power, their action may properly be reversed by the county superintendent.

In this case we do not discover that the board have in any manner failed in the proper performance of their duty.

REVERSED.

ALONZO ABERNETHY,

July 7, 1875. *Superintendent of Public Instruction.*

B. D. Bacon *et al.* v. District Township of Liberty.

Appeal from Woodbury County.

1. Testimony. The superintendent should afford full opportunity for the introduction of testimony, and the examination of witnesses should be so conducted as to disclose all material facts. What is shown by the plat need not also be presented orally.
2. Board of Directors. The action of the board cannot be reversed upon the allegations of appellant without proof, or by reason of failure of the board to make defense.
3. ————————. The acts of the board are presumed to be regular, legal, and just, and should be affirmed on appeal unless proof is brought to show the contrary.

The county superintendent sustained the board in locating the site for a new school-house where the old one now stands. B. D. Bacon *et al.* appeal.

The peculiarity of this case is that at the trial before the county superintendent no oral testimony was introduced by the appellant.

It is the duty of the county superintendent to afford full opportunity to the appellant to present evidence, and it is desirable that the examination of witnesses should be so conducted that every material fact connected with the case shall be disclosed. But the action of the board cannot be reversed upon the allegations of the appellant without proof, or by reason of failure of the board to be present and make defense.

The acts of the board are presumed to be regular, legal, and just, and should be affirmed by the county superintendent upon appeal, unless proof is brought to show the contrary.

The plats furnished with transcript in this case are unusually minute; and it is possible that they were regarded as showing the material facts relating to the case. What is shown by the plat, need not be also presented orally, but any additional facts may properly be so shown. From the plat and affidavits, it appears that the appellants desire the school-house site to be located about one-half mile south of the site on which the board resolved to erect a new house. The location of roads and dwellings in the subdistrict would seem to indicate that the point selected by the board will quite as well subserve the convenience of the inhabitants as that desired by the appellants. Under these circumstances the discretionary power of the board cannot properly be interfered with. *Edwards v. District Township of West Point. Archer v. District Township of Warren.*

Affirmed.

ALONZO ABERNETHY,

August 30, 1875. *Superintendent of Public Instruction.*

E. Gosting v. District Township of Lincoln.

Appeal from Plymouth County.

1. School-house Site: *Location of.* The action of a committee appointed by the board to locate a site is of no force until officially adopted by the board while in session.
2. ———. Subdistrict boundaries cannot be changed upon an appeal relating solely to the location of a site, nor can a site be located with the expectation that boundaries will be changed, unless such is shown to be the intention of the board.
3. Appeal. The right of appeal is confined to persons injuriously affected by the decision or order complained of. Ordinarily a person living in one subdistrict cannot appeal from an action of the board locating a site in another.

A committee appointed by the board of the above named district township to locate a school-house site for the accommodation of the residents of subdistricts number seven and nine, reported that they had selected the northwest corner of section ten, and afterward that they had chosen instead, a site about eighty rods east of the northwest corner of section eleven. There is no record showing that any action was taken by the board in relation to these reports.

Subdistrict number nine consists of the east one-half of congressional township number 90, range 45.

E. Gosting, the appellant, resides in subdistrict number seven, which comprises the west one-half of the same congressional township. The decision of the county superintendent is as follows: "After considering the evidence and the plat introduced, I sustain the committee in their first location at the northwest corner of section ten of said township." From this decision D. M. Relyea appeals.

The power to locate school-house sites is vested in the board of directors. Section 1724, School Laws of 1874. The action of a committee appointed by the board to locate a school-house site is of no force until their report is officially adopted by the board while in session.

Section 1725 provides that the board "shall determine where pupils may attend school; and for this purpose may divide their district into such subdistricts as may by them be deemed necessary." The object of dividing a district township into subdistricts is to determine where pupils shall attend school. While it is frequently the case that pupils may more conveniently attend school in an adjoining subdistrict, it would obviously be improper to locate a school-house site expressly for the accommodation of such pupils, unless with the intention of subsequently

making a redivision of the district township. The county superintendent has jurisdiction only of the matter to which the appeal relates. He cannot properly upon an appeal relating to the location of a school-house site change subdistrict boundaries, nor can he locate a school-house site with the expectation that such boundaries will ultimately be changed, unless such is shown to be the intention of the board.

The right to appeal from actions of the board is confined to persons injuriously affected by the decision or order of which complaint is made. Section 1829. Ordinarily, a person living in one subdistrict cannot properly appeal from an action of the board locating a school-house site in another.

The decision of the county superintendent is set aside, and the location of the school-house site is left to the discretion of the board.

REVERSED.

ALONZO ABERNETHY,

September 7, 1875. *Superintendent of Public Instruction.*

J. E. BROWN v. DISTRICT TOWNSHIP OF VAN METER.

Appeal from Dallas County.

1. APPEAL. The adoption of the committee's report in favor of retaining the old school-house site, is an action from which appeal may be taken.
2. BOARD OF DIRECTORS. The action of the board cannot be reversed upon the allegations of appellant without proof, or by reason of failure of the board to make defense.
3. ———: The acts of the board are presumed to be regular, legal and just, and should be affirmed on appeal, unless proof is brought to show the contrary.
4. ———: *Discretionary acts of.* The weight which properly attaches to the discretionary actions of a tribunal vested with original jurisdiction, does not apply to the decisions of an inferior appellate tribunal.

The county superintendent reversed the action of the board in selecting the old site in subdistrict number two, upon which to erect a new school-house, and located the site about eighty rods westward of the old one. From this decision the district township appeals, claiming in substance that the county superintendent erred as follows: That there was no action of the board relative to the selection of a school-house site in subdistrict number two from which an appeal would lie; that the board failed, by reason of a misunderstanding, to appear and defend, and that they were unjustly refused a rehearing; that the old site was suitable, convenient, and at the center of population, both present and prospective; and that the reversal of the action of the board was without sufficient cause, there being no evidence that they abused their discretionary power or acted with injustice.

From the transcript it appears that a committee was appointed to select a site for the erection of a school-house in subdistrict number two, that they reported in favor of the old site, and that their report was adopted by the board. The law provides that an appeal may be taken by any party aggrieved, from any order or decision of the board.

That there was an action of the board, and that the subject-matter to which such action relates is the location of a school-house site in subdistrict number two, there can be no reasonable doubt, hence the action of the board was subject to appeal, and such appeal gave to the county superintendent jurisdiction in the matter of location of said school-house site. *Gosting v. District Township of Lincoln.*

It is the duty of the county superintendent to give due notice to all parties directly interested in an appeal from the board, and to afford full opportunity for the presentation of evidence, but the action of the board cannot properly be reversed upon the allegations of the appellant without proof, or by reason of the failure of the board to be present and make defense. The acts of the board are presumed to be regular, legal and just, and should be affirmed by the county superintendent unless proof is brought to show the contrary. *Bacon et al. v. District Township of Liberty*, page 150, School Law Decisions of 1876. In this case, however, the board appear to have had due notice and ample opportunity to defend the case. It is not claimed that any additional evidence could be produced that would materially affect the issue; but that the board, understanding through popular report that the case was withdrawn, failed to be present at the trial, and upon this ground ask for a rehearing, which was very properly refused.

The site selected by the county superintendent is nearly central, being eighty rods west of that chosen by the board. Both appear to be suitable. The eastern part of the subdistrict is mostly prairie land, while the western portion is, to a considerable extent, timber land.

The evidence as to which site will better serve the interests and convenience of the residents of the subdistrict is conflicting. The board is entitled to the benefit of any doubt upon this point. Unless it is clearly proven that they have violated law, abused their discretionary power, or have acted with manifest injustice, their action should be affirmed. *Edwards v. District Township of West Point.*

It is urged by the appellee that the same weight attaches to actions of an inferior appellate tribunal, upon appeal, that is given to tribunals having original jurisdiction. It is held that the action of the board in matters of which they have original jurisdiction, is alone entitled to this consideration by any superior tribunal upon appeal.

REVERSED.

ALONZO ABERNETHY,

September 17, 1875. *Superintendent of Public Instruction.*

D. R. Lang *et al.* v. District Township of Linn.

Appeal from Warren County.

1. Appeal. Where changes are effected in district boundaries by the concurrent action of two boards, appeal may be taken from the order of the board concurring or refusing to concur, but not from the order of the board taking action first.
2. Notice. The appearance of a party at the hearing is a complete waiver of notice.
3. District Boundaries. In the determination of district and subdistrict boundaries, temporary expenditures and individual convenience should be subordinated to the more important considerations relating to simplicity of outline, compactness of shape, uniformity of size, and permanence of sites and boundaries.

Sections 1 and 12 of Linn township have been attached to Greenfield township for school purposes, and with sections 5, 6, 7, and 8, thereof, constitute a subdistrict in the district township of Greenfield, the schoolhouse being in the southwest corner of section 5.

The boards of both Greenfield and Linn townships, at their regular meetings in September, 1874, adopted a motion to the effect that sections 1 and 12 be restored to Linn township, but at a subsequent meeting, the Linn township board rescinded their action. Again, at the regular meeting in September, 1875, both boards took action, the Greenfield board adopting, and the Linn, rejecting, the motion for restoration. Appeal being taken from the decision of the Linn board, the county superintendent reversed their action, and H. M. Close, president of the board, appeals.

The allegations of the appellant, that the county superintendent had no jurisdiction, it being a case requiring the decision of two boards of directors, was not established, since the board of Greenfield township had acted affirmatively upon the question of transfer. *Dayton v. District Township of Cedar*, page 128, School Law Decisions of 1872.

It was alleged, that by reason of insufficiency of notice, interested parties were not present at the trial before the superintendent; but the appearance of the president of the board was a complete waiver of notice.

It would appear that the territory in question was legally restored to Linn township by the concurrent action of the two boards interested, in September, 1874, but, as the Linn township board, at a subsequent meeting, rescinded their action relating thereto, it continued under the jurisdiction of the Greenfield board, until transferred by the decision of the county superintendent.

The affirmance of the decision of the superintendent will involve the district in some expense, and will be attended with some inconvenience to a portion of the residents of the territory affected thereby, which, by a reversal, might be postponed, but only postponed, since the element which has so persistently sought this territorial restoration, will doubtless continue its efforts until successful. It will, on the contrary, be in accord with the expressed wishes of the Greenfield board, and of a large minority of that of Linn. It will restore the boundaries to their normal condition, will render practicable the formation of subdistricts of compact shape and uniform size, will tend to secure, at an early day, the permanent location of school-house sites and subdistrict boundaries, and it is believed will contribute to the harmony and best interests of the district.

AFFIRMED.

ALONZO ABERNETHY,

February 25, 1876. *Superintendent of Public Instruction.*

JOSEPH HAYS v. DISTRICT TOWNSHIP OF CHESTER.

Appeal from Poweshiek County.

1. APPEAL. Appeal may be taken from the action of the board in laying the subject-matter of a petition on the table.
2. TESTIMONY. Sufficient latitude should be allowed in the introduction of testimony to permit a full presentation of the issues involved, even if irrelevant testimony is occasionally admitted.

Subdistrict number one is composed of sections 1, 2, 11, 12, 13 and 14, and subdistrict number six of said district township is composed of sections 23, 24, 25, 26, 27, 34, 35 and 36. A petition was presented to the board praying that sections 1, 2, 11 and 12 be made a subdistrict. The board being in session, a motion was made to form one subdistrict, to be composed of said sections, 1, 2, 11 and 12, and another subdistrict to be composed of sections 13, 14, 23 and 24. This motion was lost, reconsidered, and again lost, when on motion the whole subject was laid on the table.

Upon appeal the county superintendent made an order for the formation of two subdistricts as follows: subdistrict number one to consist of sections 1, 2, 11 and 12, subdistrict number six to consist of sections 13, 14, 23 and 24. Winchester Stockwell, on behalf of the board, appeals.

At the hearing before the county superintendent the appellee moved to dismiss the case for the reason that the secretary's transcript shows the subject-matter complained of to be still pending before the board, and that no final decision or order had been made in relation to the case.

From the transcript it appears that the board had twice refused by direct vote to form the subdistricts in question. The subsequent motion to lay the whole matter on the table was a convenient method of preventing further discussion. The motion to dismiss the case was properly overruled.

One of the errors assigned in the affidavit is, that the superintendent permitted the introduction of testimony pertaining to matters outside of those presented by the appeal. If this were true, which is not apparent from the record, it would not form a valid ground for reversal.

Considerable latitude should be allowed in the introduction of testimony, to make a full presentation of the issues of the case, even if irrelevant testimony is occasionally admitted.

Some of the residents upon the territory in question have an unreasonable distance to send to school. The change made by the superintendent establishes two subdistricts of uniform size and shape, and will probably permit the erection of school-houses on permanent sites, convenient of access for all, and it is believed will eventually prove to be for the best interests of the district.

AFFIRMED.

ALONZO ABERNETHY,

April 15, 1876. *Superintendent of Public Instruction.*

MARY M. THOMPSON v. DISTRICT TOWNSHIP OF JASPER.

Appeal from Adams County.

1. TEACHER. When a teacher is dismissed in violation of his contract, an action in the courts of law will afford him a speedy and adequate remedy; when discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right of appeal.
2. ———. The teacher is entitled to the counsel and co-operation of the subdirector and board in all matters pertaining to the conduct and welfare of the school.

The board discharged Miss Mary Thompson for dereliction of duty as teacher in one of the public schools of the district. She appealed to the county superintendent who reversed their decision; from this action, the board through their president, John McDevon, appeals.

At the hearing before the county superintendent the board filed a motion to dismiss the case for want of jurisdiction, insisting that the teacher having been dismissed in accordance with the provisions of section 1734, her proper remedy was an action at law for damages.

When a teacher is dismissed in violation of his contract, an action in the courts of law, on the contract, will afford him a speedy and adequate

remedy; when discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right of appeal to the county superintendent, who is the proper officer to review questions of this character, and to determine whether the board have in the exercise of their authority violated the law or abused their discretionary power. Questions concerning the validity of contracts, the right to recover for services performed, and the interpretation of law, belong especially to judicial tribunals. Questions concerning the character and qualifications of the teacher, and his management of the school, are, by appeal, within the jurisdiction of the county superintendent. The motion to dismiss was properly overruled.

The charges of dereliction were want of promptness in commencing school in the morning, and an occasional refusal to hear the recitation of one or more of her pupils. For this dereliction there appears to have been some extenuating circumstances. Under the contract it was the subdirector's duty to have fires built. The boy employed to do this work often failed to have the school-house in comfortable condition at nine o'clock. The teacher usually made up lost time by teaching after four o'clock, and there is no evidence that the subdirector or board ever advised her with regard to the performance of her duties. The board convened at the school-house without previous notice to the teacher, and after taking the testimony of some of her pupils, unanimously voted to discharge her.

AFFIRMED.

ALONZO ABERNETHY,

May 8, 1876. *Superintendent of Public Instruction.*

S. W. WOODS *et al.* v. DISTRICT TOWNSHIP OF BRIGHTON.

Appeal from Cass County.

1. BOARD OF DIRECTORS. The acts of the board must be presumed to be regular, and should be affirmed on appeal unless positive proof is brought to show the contrary.
2. SCHOOL-HOUSE SITE. The prospective wants of a subdistrict may properly have weight in determining the selection of a site, when such selection becomes necessary, but not in securing the removal of a school-house conveniently located for the present.
3. ———. To make a distinction between the children of freeholders and those of tenants in determining the proper location for a school-house, is contrary to the spirit and intent of our laws.

The board by a vote of five to two rejected a petition asking the removal of the school-house in subdistrict number eight. On appeal the county superintendent reversed the action of the board, and ordered the

removal of the school-house to the place named in the petition. Wm. F. Altig appeals.

Subdistrict number eight contains sections 27, 28, 33, 34, and sixty acres lying in section 32, and has a good, commodious school-house, erected three years ago, one-half mile west of the center, on a public road passing east and west through the center of the subdistrict. There are about thirty children of school age in the subdistrict, twenty-two of whom reside in the western half, and nineteen west of the present site. All those residing east of the present site, except one child, are within a mile and a half of the school-house, while by the proposed removal, a large number would be at a greater distance.

The action of the board in refusing to remove a school-house should not be interfered with on appeal, except upon evidence of violation of law, or abuse of discretionary power. In this case there is no evidence of such abuse. The prospective wants of a subdistrict may properly have weight in determining the selection of a site upon which to build a school-house, when such a selection becomes necessary, but not in determining the removal of a house, located conveniently for the present wants of the subdistrict.

It appears that a considerable portion of the school population consists of the children of tenants, and much stress is laid upon the assumed distinction that should be made between the children of tenants and those of freeholders, in determining the proper location of the school-house. Distinctions based upon the ownership of property, or permanence of residence are not made in the law, would not well comport with the fundamental principles upon which our public school system is based, and should not have weight in determining the location of school-house sites. It is the duty of the board to provide equal school facilities for the youth of the district as far as practicable, regardless of considerations relating to permanence of residence.

The school-house may properly be removed whenever the conditions of the subdistrict require it, but unnecessary expense should not be incurred in such removal in anticipation of possible, or even probable, changes of this character.

REVERSED.

ALONZO ABERNETHY,

July 31, 1876. *Superintendent of Public Instruction.*

J. N. Arthur *et al.* v. Independent District of Fairway.

Appeal from Adams County.

1. School-house Sites: *Location of.* The necessities of the present must be observed in locating school-house sites, in preference to the probabilities of the future.
2. New Evidence. New evidence can be introduced only when the facts materially affecting the case could not have been known before the trial.
3. Remanding of Cases. When the evidence discloses that the action of the board was an unwise one, and the facts are not sufficiently shown to determine what should be done, the case should be remanded to the board.

In this case the board of the independent district of Fairway made an order on the 26th of April relocating the school-house site; from this order J. N. Arthur and others, residents of the district, appealed to the county superintendent, and upon his affirming the action of the board, to the superintendent of public instruction.

The district consists of sections one, two, eleven, twelve, thirteen and fourteen, and the old school-house stands near the southwest corner of the southeast quarter of section one. The proposed new site is in the northwest corner of the southwest quarter of the northwest quarter of section twelve, on a public highway, and one quarter of a mile north of the geographical center of said district.

The grounds of objection by the appellants to the removal are substantially, that the new site is on low bottom lands and subject to overflow, not accessible at all times of the year, and that it is not as near the center of the school population as the old site. They also suggest that a location at the cross roads one-half mile east of the new site is better ground and more convenient to the people. In fixing the school-house site, the geographical position and the convenience of the people of each portion of the district should be considered. Section 1724, School Laws of 1876.

From the large amount of testimony it is evident that the new site chosen is in a low place, and an affidavit sent to this office, and signed by a number of residents, proves beyond question that the site has been overflowed for several days of the last month. By a close comparison it is found that the number of residents who will have their distance to school increased by choosing the new site, is greater than of those who will have their distance diminished. By locating the school-house at the cross roads, one-half a mile east of the proposed new site, which location

is claimed to be higher, and therefore less liable to overflow, three-fourths of the residents will have their distance diminished by forty to one hundred and sixty rods.

Although it may be true, as is affirmed in the testimony, that the western part of the district is as capable of settlement as the eastern part, the necessities of the present must be observed in locating school-house sites, in preference to the probabilities of the future. While it is the rule of this department to sustain discretionary acts of the board, it seems that in this case the true interest of all concerned, and justice to a large portion of the people, demands that the school-house should not be moved to the new site chosen.

To what extent the high waters of last month did affect the other locations under consideration, is not known to this department, it is therefore best to let the matter come up anew before the county superintendent for a rehearing. The decision of the county superintendent is therefore reversed, and the case remanded for a rehearing, with the direction from this department that the proposed new site is an unsuitable one for school purposes.

REVERSED.

C. W. VON COELLN,

October 31, 1876. *Superintendent of Public Instruction.*

R. BUZZARD v. INDEPENDENT DISTRICT OF LIBERTY.

Appeal from Monroe County.

QUO WARRANTO. The only proper means of affirming the right to exercise the privileges of an office, or to contest the illegal exercise of the same, is set forth in sections 3345-3352.

This is an action brought to compel the board of the independent district of Liberty to recognize R. Buzzard as a member elect.

The evidence in the case seems to show that the appellant was duly elected and qualified. On presenting himself at the meeting of the board, he was by vote of the board debarred from acting, and another person admitted as a member. From this order of the board he appealed to the county superintendent, who dismissed the case for want of jurisdiction. From this action R. Buzzard appeals.

It has been the uniform decision of this department that the right or title to office cannot be determined by any authority other than a court of law. We are compelled to agree with former opinions, by supreme court decisions, 16 Iowa, 371, 17 Iowa, 368, 22 Iowa, 75, in which the fact

that an information *quo warranto* is the only proper means legally to affirm the right to exercise the privileges of an office or to contest the illegal exercise of the same, is clearly set forth.

In all cases over which we have jurisdiction, our decision is final; hence, if for no other reason, we cannot assume jurisdiction in this matter, as both parties have access to the courts, as provided by sections 3345-3352 of the Code. The county superintendent therefore very properly decided to dismiss the appeal, and his order is hereby

AFFIRMED.

C. W. VON COELLN,
Superintendent of Public Instruction.

July 2, 1877.

J. J. WILSON *et al.* v. DISTRICT TOWNSHIP OF MONROE.

Appeal from Mahaska County.

1. COUNTY SUPERINTENDENT: *Jurisdiction of.* The county superintendent is not limited to a reversal or affirmance of the action of the board, but he determines the same questions which they had determined.
2. SCHOOL-HOUSE SITE: *Location of.* The location of a school-house can be dependent upon a change of boundaries only when it is shown in evidence that it is the definite and positive intention to make such a change.
3. CONDITIONAL RULING. A county superintendent may make a conditional ruling, by which his own decision is governed.

On the 14th day of April, 1877, the board of the above named district township located the site for a school-house. From their action J. J. Wilson and others appealed to the county superintendent, alleging that the board had erred in making the location, in that, by reason of distance owing to the location of the roads, the location as made effectually deprived many of the subdistrict of the privilege of attendance at school. On trial, the county superintendent reversed the action of the board and located a new site. From his decision the board appealed to this department, claiming that the county superintendent erred in selecting a site entirely different from those with reference to which testimony was taken; that it is on the extreme east line of said subdistrict, and hence cannot be called at all central; that the board took into account in making the location the possibility of a change in the northern boundary of the subdistrict, which would make the situation chosen a suitable one for the remaining subdistrict; that a portion of his decision was conditional and void; and that the board did not abuse the discretion vested in them by making the location as they did.

The assumption that the county superintendent did not have the right to locate a school-house site differing in location from the one made by the board, or the one petitioned for by the appellants, is a mistake. See *John Clark v. District Township of Wayne,* School Law Decisions of 1876, page 47; also the opinion of the attorney general in *Iowa School Journal* for April, 1866, in which the following ruling was made: "The county superintendent is not limited to a reversal or affirmance of the action of the board, but he determines the same questions which it had determined."

The nature of the subdistrict is peculiar. It is long and narrow, and its western boundary, the North Skunk river, which also makes nearly all its southern boundary, is a disturbing element when we attempt to locate the site of a school-house to accommodate all the people. While under ordinary circumstances a site near the boundary of a subdistrict would be unadvisable, in this case it seems necessary, unless additional road facilities can be secured. The site selected by the county superintendent is clearly the one best calculated to accommodate the whole subdistrict as constituted at present.

The location of a school-house site can be dependent upon a change of boundaries only when it is shown in evidence that it is the intention of the board, or boards, to make such change. *E. Gosting v. District Township of Lincoln.* In this case, it is not claimed that any change is actually intended or expected. The limit, as made provisionally by the county superintendent, of thirty days for such changes of roads as would make a more central location feasible and desirable, was too short a time, under the provisions of law, to effect the result. For that reason we shall extend the time for the establishment of a road to ninety days from the date of his decision, or to such time as the board of directors may show to be necessary to establish the road, provided that immediate steps shall be taken to bring about the result, if desired.

The discretion of the board was evidently abused in not providing equal school facilities for those living in the northern portion of the subdistrict, by their location of the school-house site.

In case the road contemplated is secured, the board may locate the site thereon, as near the center of the subdistrict as good and suitable ground can be found. If no steps are taken to secure such a road, or in case the road cannot be procured, the location last chosen by the county superintendent is to be regarded as the site, and his decision is hereby

AFFIRMED.

C. W. VON COELLN,

August 7, 1877. *Superintendent of Public Instruction.*

KENNON, ORME, *et al.* v. INDEPENDENT DISTRICT NUMBER FOUR, NODAWAY TOWNSHIP.

Appeal from Adams County.

1. SCHOOL-HOUSE SITE. The choice of a school-house site by the electors has no binding effect.
2. DISCRETIONARY ACTS. Since the board have original jurisdiction, their discretionary acts should not be interfered with by an appellate tribunal, although not agreeing with their judgment, unless they violated law, showed prejudice or malice, or abused their discretion in such manner as to require interference.

At the annual meeting in March, 1877, the electors of independent district number four, Nodaway township, voted to issue bonds to build a school-house, not specifying where to build said house. The board called an informal meeting of the electors, which was held May 12, to give expression to their views as to the location they would prefer. On the second of June the board made a location differing from the one which a majority of the electors had indicated as their choice. From this order of the board, Kennon, Orme and others appealed to the county superintendent, who on trial reversed the order of the board, and selected the site chosen by the electors at the special meeting. David Shipley and Joseph Landes, members of the board, appeal.

The evidence in the case discloses a desire on the part of the board to determine without prejudice, the best site. The expression of the electors as given, was only suggestive, and not of binding force. If the site had been fixed by them at the time of, and in connection with, the voting of the bonds, the board would have been compelled to follow those instructions. See *Hubbard v. District Township of Lime Creek*, first division of syllabus. But there is no provision in law for an extra or special meeting of electors to instruct a board with regard to the location of a site, nor are such suggestions of any force except as an expression of opinion, since the board are by law invested with the power to locate sites.

The fact that one member of the board changed his mind with regard to the best location, shows that on further consideration his judgment led him to favor the site best adapted to the needs of the district, since we may not question his motives, but must regard his action as based upon proper grounds.

The site chosen by the board is near the geographical center of the district, and the location of the roads, as shown by the plat in evidence, is such as would not warrant us in reversing the discretionary act of the board. And even though an appellate tribunal does not fully coincide

with the decision of the board, it is compelled to sustain their action, unless it is proved conclusively that they violated law, acted with passion or prejudice, or with manifest injustice, since boards of directors are invested by law with large discretionary powers, and having original jurisdiction, their acts are entitled to great consideration, and should not be reversed without the clearest reasons. The board are entitled to the benefit of every doubt. See *Bacon v. District Township of Liberty*, School Law Decisions of 1876, page 150, *Edwards v. District Township of West Point;* also *Brown v. District Township of Van Meter.*

The superintendent should have affirmed the action of the board, and because we do not believe that the discretionary power of the board has been abused to such an extent as to require a reversal, his decision is hereby

REVERSED.

C. W. VON COELLN,

November 13, 1877. *Superintendent of Public Instruction.*

T. J. DUNLAVY v. O. M. KLINGINSMITH.

Appeal from Davis County.

1. PUNISHMENT. The use of the rod is allowable as a last resort.
2. CERTIFICATE: *Revocation of.* The inability to govern is sufficient reason for withholding a certificate and for the revocation of the same.
3. ——: ——. A certificate which has expired by limitation cannot be revoked.

In this case T. J. Dunlavy brought charges against O. M. Klinginsmith, the teacher of his children, for brutal treatment, the specification being that said Klinginsmith whipped Dunlavy's stepson cruelly and excessively. Other charges were first prepared, but finally withdrawn. The county superintendent decided that the charges were not sustained, and Mr. Dunlavy appeals to this department.

The claim made by appellant's counsel, that all whipping is now nearly frowned down by the people, if not by the courts, does not seem to be well founded, when we consider the strong position taken by our own court in 45 Iowa, 250. That the use of the rod is the last resort of a good teacher, and is seldom used, we all admit; but scarcely an experienced educator will say that the use of the rod should be absolutely discontinued. On the other hand, the counsel for appellee mistakes the jurisdiction of the county superintendent, when he claims that such a case as this one cannot affect the withholding or revocation of a certificate.

Although the general character of the teacher may be good, if he should fail to be able to govern a school without the constant use of the rod, and govern but poorly at that, it is the duty of the county superintendent to protect the people from abuse by refusing to grant a certificate, or if he has granted it, he may revoke.

In the case before us, it is undoubtedly true that the boy who received the whipping had provoked the teacher and deserved by his persistent small offenses a severe punishment. That the punishment was severe, and perhaps too severe, is apparent from the evidence. There is, however, no good proof to show that the teacher punished with malice or intent to injure beyond a reasonable correction.

The case itself ought to have been dismissed by the county superintendent, because if there was any object in the charges, it was for the purpose of revoking the certificate; but a certificate expiring by limitation on the 6th of January could not be revoked on the 22d of January. As long as the case was decided on its merits, we feel obliged to sustain the discretionary act of the county superintendent.

AFFIRMED.

C. W. VON COELLN,

April 22, 1878. *Superintendent of Public Instruction.*

Z. DARNELL v. INDEPENDENT DISTRICT OF AMITY.

Appeal from Lucas County.

1. SUSPENSION OR EXPULSION. Suspension or expulsion of a scholar, in an independent district, requires the action of the board by a majority, and the concurrence of the president.

2. RECORDS. The record of the secretary must be considered as evidence, unless there is proof of fraud or falsehood.

The majority of the board of the independent district of Amity, expelled Z. Darnell from their school for refusing to obey a rule of the teacher. The said Darnell appealed to the county superintendent, who affirmed the action of the board, and an appeal is taken to the superintendent of public instruction.

Section 1735 requires a majority of the board with the concurrence of the president in order to suspend or expel a scholar for gross immorality or persistent violation of the regulations or rules of the school. This we interpret to mean, that the board, in regular or special session, can by a majority of the board, with the concurrence of the president, suspend or expel.

While there is some doubt in this case whether there really was a meeting of the board, we must accept the record of the secretary as correct so long as there is no proof of fraud or falsehood.

Counsel for appellant seems to think that the law requires a regular trial and defense. The law makes no such demand. The remedy for an aggrieved party is an appeal before the county superintendent, where a trial is had and a defense can be made.

The case in controversy shows on the trial that the young man, Darnell, had not obeyed the command of his teacher, who inflicted a slight punishment upon him and others, for a disturbance in which both he and other boys had participated. If this refusal to obey was persisted in, the board, under section 1735, had the right to suspend or expel the said Darnell. The offense for which the punishment was given was perhaps of trivial character, but the refusal to obey on the part of a young man capable of reasoning, was a serious offense, and must be treated as such.

The expulsion of the young man was undoubtedly a severe measure, and if the case had been tried by us *de novo*, we should have substituted a conditional suspension until obedience was secured. But the discretionary act of the board is not tainted by malice nor passion, and there is sufficient reason for sustaining the action of the board. The decision of the county superintendent is therefore

AFFIRMED.

C. W. VON COELLN,

June 10, 1878. *Superintendent of Public Instruction.*

WM. DONALD v. DISTRICT TOWNSHIP OF SOUTH FORK.

Appeal from Wayne County.

1. SALARY OF TEACHERS. The salary of teachers should be in proportion to their ability and responsibility, and not equal when these circumstances differ materially.

2. ——— ———. The control of salaries is wholly within the power of the board and cannot be determined by an appeal, because it is not within the jurisdiction of county or state superintendent to order the payment of money.

On the 18th day of March, 1878, the board of the district township of South Fork made an order fixing the salaries of teachers in the township for the summer schools at the uniform price of twenty dollars per month. From this action William Donald appealed to the county superintendent, who affirmed the action of the board. From his decision William Donald appeals.

It is alleged by the appellant that the county superintendent erred in deciding that the board did not violate law in voting that the same amount of salary should be paid to the teacher in each subdistrict. It is claimed that the board should have provided for a higher salary in some schools of the township.

The difficulty with appellant's counsel is that he believes the note to be a part of the law. My predecessor gave his own views of the employment of teachers and I most fully agree with him in his view. The law leaves the whole matter to the directors and presumes that they will deal equitably. Unfortunately, selfishness is a nearly universal characteristic of human kind, and too often the majority, representing weak districts, weak both in numbers and in property, demands an equal distribution of the money on hand for teachers' pay.

The law organizing the rural independent districts, passed in 1872, arose from the feeling that this selfishness was working injustice to little towns and wealthy and populous subdistricts. The creation of these independent districts works an injustice to the weaker districts, for it is proper and desirable that the wealthier districts should aid their weaker neighbors to sustain fair schools.

With regard to this case, we do not see wherein the board violated law. The idea of prejudice is slightly apparent from the testimony, but not sufficiently to reverse the action of the board. That equity has not been observed seems very evident, for it must be presumed that a larger school population requires a better teacher, and if a better and more experienced teacher is needed, a better salary ought to be paid. There are other considerations. Generally the expense of living is greater in the town than in the country. It is also the probability that a larger tax is paid by the town than by the country.

We are not able at this distance to determine whether twenty dollars is a sufficient compensation for the teacher of subdistrict number four of South Fork. But if twenty dollars is only sufficient compensation for the country subdistricts, it is our belief that a higher compensation should be given for the teacher in the town.

It is out of our jurisdiction to give advice to the board what to do in this case, after determining that we have no power to reverse their action, but we suggest that equity would be served if they should pay the five dollars per month assumed by Mr. Anderson. After giving our views thus in full, we must agree with the county superintendent, and therefore the decision of the county superintendent is

AFFIRMED.

C. W. VON COELLN,

June 29, 1878. *Superintendent of Public Instruction.*

JAMES JACOBY *et al.* v. INDEPENDENT DISTRICT OF NODAWAY.

Appeal from Adams County.

1. SCHOOL-HOUSE SITE. A school-house site fixed by county or state superintendent affirming the discretionary act of the board, allows the board to exercise their discretion again, especially if material changes have occurred.
2. ————. The endeavor to show regard for the expressed wishes of the electors in the choice of a site, will be an added reason in support of the action of the board.
3. DISCRETIONARY ACTS. Suggestions from the electors upon matters entirely within the control of the board will in no manner prevent the fullest exercise of the discretion vested in the board by the law.

In the summer of 1877, the board of the independent district of Nodaway located a school-house site. They selected one not desired by a large majority of the electors, as expressed at an informal meeting called by the board. An appeal was taken to the county superintendent, who reversed the action of the board, and in turn to the superintendent of public instruction, who reversed the decision of the county superintendent, thereby sustaining the action of the board, on the ground that abuse of the discretion given by the law to the board, as charged, was not proved.

Since the decision above referred to was rendered, a dwelling has been erected within twenty rods of the site chosen. Also, a material addition has been made to the district on its east side of a strip of land three miles in length and one-half mile in width.

At a meeting of the board held April 22, 1878, they relocated the school-house site, choosing the old site in place of the one selected by them last year. From their action James Jacoby and others appealed to the county superintendent, who affirmed the order of the board. From his decision D. Shipley and Ed. Kennedy appeal.

This case was before us last year and we affirmed the action of the board in selecting the new site, sustaining the discretionary act of the board. Hence, the principle that a site selected by the county or state superintendent cannot be changed unless there have been material changes in the district, does not apply. There have been changes by the addition of new territory and a dwelling being erected within less than forty rods of the proposed site. The choice of the old site is in conformity with the wish of a majority of the electors, and does not prove any abuse of discretion, much less a violation of law. The action of the board is therefore sustained, and the decision of the county superintendent

AFFIRMED.

C. W. VON COELLN,

August 26, 1878. *Superintendent of Public Instruction.*

L. E. Cormack v. District Township of Lincoln.

Appeal from Adams County.

1. Contracts. An appeal will not lie to enforce a contract.

2. Janitorial Services. If a teacher serves as janitor in sweeping the room and building fires, he should be paid from the contingent fund for such services.

Mr. Vandyke, a subdirector, contracted with Mrs. L. E. Cormack as teacher for the winter term of school. The terms of the contract included that the teacher was to receive twenty-five dollars per month for teaching and one dollar and twenty-five cents a month for building the fires and sweeping the school-house. The board refused to audit the full account, which would give the teacher pay for janitor's work, claiming that the said subdirector exceeded his authority in so contracting. Mrs. Cormack appealed to the county superintendent, who reversed the action of the board. W. C. Potter, president of the board, appeals.

This case has evidently for its object the securing of money on contract, and as section 1836 prevents county and state superintendents from rendering a judgment for money, it has been the common custom to refuse to entertain any appeal in which a contract is to be decided by such appeal; for this reason the county superintendent should have dismissed the case for want of jurisdiction.

It may not be out of place here to state that unless a contract with the teacher provides that building fires and sweeping the house is included, the board cannot require such service of the teacher. The payment for such services should come from the contingent fund and should be specifically mentioned. The teachers' fund is not to be used for paying for janitorial services.

Without deciding any question at issue, we are of the opinion that the subdirector did not exceed his authority given him by section 1753 when he agreed to pay a reasonable sum for janitorial services besides the twenty-five dollars paid under instruction from the board for teacher's services. But since we do not consider the case within our jurisdiction the decision of the county superintendent is reversed and the case dismissed.

Reversed.

C. W. von COELLN,

March 1, 1879. *Superintendent of Public Instruction.*

Note—We have since learned that the teacher recovered in a suit in the courts at law.

DISTRICT NO. 2, HARLAN TOWNSHIP, v. DISTRICT NO. 1, HARLAN TOWNSHIP.

Appeal from Page County.

1. AFFIDAVIT. The lack of an affidavit is sufficient ground to refuse a hearing.
2. ARBITRATION. If the county superintendent is asked to arbitrate no appeal will lie.
3. TUITION. Collection of tuition under section 1793 cannot be done by appeal to the county superintendent, but must be settled through the courts.

We fail to find in this case the affidavit of appeal from an action of the board of number one. This of itself is such an irregularity as to invalidate the whole proceeding. From the secretary's transcript and the evidence we learn that district number two presented a bill of tuition to district number one, and that the latter refused to pay the same, whereupon the two boards agreed to an arbitration by the county superintendent. If this is the transaction we have no right to meddle with such arbitration, and it should be adhered to by both parties. If the case had been regularly before the county superintendent on appeal, based upon proper affidavit, our opinion is that the county superintendent should have dismissed the case, as it was indirectly a judgment for money, which neither county nor state superintendent can decide. The manner of deciding such cases is indicated in section 1793. The account, if refused, should have been presented to the county auditor, and by him be paid from the next semi-annual apportionment. The other board has a remedy by injunction upon the auditor.

We would add here that we have held that such a notice by a secretary holds good only for the term, or for such longer time as the board may agree upon.

At present, with the amendment made by the seventeenth general assembly, chapter 41, no such account can be made except by consent of the county superintendent, in which case no appeal will lie.

With these explanations we feel obliged to dismiss the case as not within our jurisdiction.

DISMISSED.

C. W. VON COELLN,

April 24, 1879. *Superintendent of Public Instruction.*

W. F. Rankin v. District Township of Lodomillo.

Appeal from Clayton County.

1. Records. The record of the secretary shall be considered as evidence, and cannot be invalidated by parol evidence unless there is proof of fraud or falsehood.

2. Territory: *Transfer of.* Where territory is to be transferred by concurrent action of two boards to the district to which it geographically belongs, a majority of the members elect is not necessary, as required for the change of subdistrict boundaries.

This appeal relates to the transfer of territory in the civil township of Cass, which has belonged to the district township of Lodomillo since 1856, to the township to which it geographically belongs.

The board of the district township of Cass appointed a committee to meet a committee chosen by the Lodomillo board, to agree upon terms of transfer. The district township of Lodomillo also appointed a committee. The joint committee agreed upon a report, which the board of Cass adopted September 16, 1878. On the 12th day of October, 1878, the Lodomillo board, by a vote of four of the six members present of a board of ten, also adopted the report and accepted the proposition agreed to by the board of Cass.

From the action of the Lodomillo board W. F. Rankin appealed to the county superintendent, who dismissed the case for want of jurisdiction, and stated that the action of the board was plainly in violation of the law, since section 1738 requires a majority of the board to change the boundaries of subdistricts. From this decision W. F. Rankin appeals.

The secretary's transcript of the transactions of the meeting of the board of Lodomillo, held October 12, 1878, does not show any irregularity in the transaction, does not show the number of members present, nor the number of votes cast by which the motion was carried.

According to a well established principle of law the records of any public or private corporation must be considered regular, and cannot be set aside by parol evidence, except under an allegation of fraud. Based upon the evidence of the transcript the whole transaction was carried on in conformity with law, and we can see no reason to interfere with the action of the board. If we admitted the testimony of M. E. Axtel, showing that only six members of a board of ten were present, and that four of these six voted for the transfer, we would still hold that said transfer was legally made.

The action of the board was not a change of boundaries of subdistricts, but a transfer under section 1798. The territory transferred, being part of districts organized before the law of 1858 took effect, could be transferred by concurrent action of the boards to the district to which it geographically belongs, and the limitation of section 1738, requiring a majority of the board to change subdistrict boundaries, is not applicable to this case.

The appeal is brought from the action of the board which concurred, and is therefore taken in a proper manner. For the reasons set forth the action of the board is sustained and the decision of the county superintendent is REVERSED.

C. W. VON COELLN,
Superintendent of Public Instruction.

May 28, 1879.

L. B. COLBURN *et al.* v. DISTRICT TOWNSHIP OF SILVER LAKE.

Appeal from Palo Alto County.

1. EVIDENCE. To establish malice or prejudice on the part of the board, positive evidence must be introduced.
2. COUNTY SUPERINTENDENTS. A county superintendent should not ask the state superintendent to decide a case on appeal for him, but may ask for an interpretation of law, either by the state superintendent, or through him, by the attorney-general.

On the 25th day of August, 1879, the board of the district township of Silver Lake fixed the location of a school-house on the old site. From this order of the board, L. B. Colburn and others appealed to the county superintendent, who affirmed the action of the board, and from this decision the same parties appeal.

Among the errors enumerated, the appellants urge that the county superintendent erred in holding that the board was not actuated by passion or prejudice. We fail to find any evidence establishing the existence of such malice or prejudice on the part of the board. Appellants also claim that the county superintendent erred in basing his decision on the verbal opinion of the state superintendent, given prior to the hearing of the case.

This gives us an opportunity of censuring a practice quite common among county superintendents to ask the superintendent of public instruction for his opinion in an appeal which is pending. I have made it a universal practice to refuse answers upon the questions involved in the particular case, and have given only general principles which should

govern county superintendents in determining cases of appeal. These general principles are so well established that an intelligent county superintendent ought to be familiar with them.

I believe that I advised the county superintendent in this case not to measure the respective distances of the different locations from the geographical center, before the trial of the appeal.

It is proper for a county superintendent to ascertain the interpretation of points of law, by securing an opinion from this department, or from the attorney-general through this department.

Without fully determining the merits of the respective locations, we must hold that the board did not abuse their discretion sufficiently to warrant interference. The appellants failing to prove malice or prejudice on the part of the board, their order should stand, and the decision of the county superintendent affirming their action is

AFFIRMED.

C. W. VON COELLN,

March 30, 1880. *Superintendent of Public Instruction.*

WM. BARTLETT v. DISTRICT TOWNSHIP OF SPENCER.

Appeal from Clay County.

1. APPEAL. May be taken by any resident elector of the district, aggrieved by an action of the board.
2. BOUNDARIES. Must conform to congressional divisions of land.
3. SCHOOL-HOUSE SITE: *Proper location of.* Depends upon form of subdistrict.
4. TERRITORY. All territory must be included within some school district.

On the 22d day of October, 1881, the board of the above named district township adopted the report of a committee locating a site for a school-house in subdistrict number nine on the southeast corner of the southeast quarter of section twenty-one. From their order, William Bartlett appealed to the county superintendent, who reversed the action of the board and located the site on the northwest corner of the northeast quarter of the southeast quarter of section twenty-one. From this decision of the county superintendent, C. F. Archer and D. A. Davis appeal.

The counsel for the appellants files a motion to dismiss the appeal on the ground that persons not parties to the hearing below are debarred from appealing to the superintendent of public instruction. It has been repeatedly held that any person aggrieved may prosecute an appeal from the decision of the county superintendent, unless the right of appeal has

been waived by previous agreement. See *Edwards et al. v. District Township of West Point*, also *Gosting v. District Township of Lincoln.*

The subdistrict in which the location was made was formed by action of the board at their regular meeting in last September. The boundaries fixed by the board at that time, as shown by the plats in evidence, are the Little Sioux river and Prairie creek on the north, east and south, and the half section line running north and south through sections eighteen, nineteen, thirty and thirty-one, as the western boundary.

It is shown by the plat that the half mile strip on the western side of the subdistrict is supposed not to belong to subdistrict number nine, and it is stated by the county superintendent that this territory is supposed to be temporarily attached to the adjoining township for school purposes. We are compelled to notice this irregularity of boundaries, since the proper location of any school-house obviously depends largely upon the form and extent of the territory for which the house is designed. Section 1796, providing for the creation of subdistricts and for subsequent alterations in their boundaries, contains the following: "Provided that the boundaries of subdistricts shall conform to the the lines of congressional divisions of land."

When government lines follow large streams, or other bodies of water, a division is sometimes formed containing less than forty acres, but unless such exception applies, the smallest congressional division is the one-sixteenth of a section, or forty acres in a square form. In fixing the boundaries of subdistricts no smaller subdivision can be made, and a forty acre tract must be included in the subdistrict, or excluded, as a whole.

The only provision of law by which the half mile strip could be attached to the adjoining district township, is found in section 1797. The transfer can be made only when natural obstacles intervene. It is apparent from the plats in evidence that no large unbridged stream, or any other natural obstacle, exists. Hence we must conclude that it is the duty of the board of directors of the district township of Spencer to provide that the strip in question shall be a part of some subdistrict. It seems probable that a portion of the territory referred to will naturally fall to subdistrict number nine.

The county superintendent appears to have presumed that the subdistrict would ultimately include all the territory to the township line. That the territory does belong to the district township of Spencer, unless it has been attached to the adjoining township in accordance with section 1797, there can be no question.

Such being the facts in this case, and the evidence disclosing that the board did not exercise that care in selecting a site which is desirable when so many interests are involved, we are disposed to remand the case

to the board, with the suggestion that they adjust the boundaries of the subdistrict, and determine upon some other site than the one chosen by them, with the intention to furnish the best accommodation to all parties.

REVERSED AND REMANDED.

J. W. AKERS,

February 15, 1882. *Superintendent of Public Instruction.*

J. D. HANDERSHELDT v. DISTRICT TOWNSHIP OF DES MOINES.

Appeal from Jefferson County.

1. DISCRETION: *Abuse of.* Is not established by evidence showing that a different action on the part of the board would have been preferred by the electors.
2. DISTRICT ORGANIZATION: *Validity of.* The county superintendent has no jurisdiction to determine the validity of district organization.

A petition was presented to the board asking that certain territory in Des Moines township be set aside to form, in connection with territory to be obtained from the independent district of Liberty number eight, a new subdistrict to be known as subdistrict number nine, Des Moines township.

The board acted on this petition and made the following order: "In the matter of the petition of J. D. Handersheldt and Silas Pearson, asking for the formation of a new subdistrict to be known as number nine, in the district township of Des Moines. All the territory within the boundary lines therein described, is hereby granted, provided sufficient territory be granted by the independent school district of Liberty number eight, to make a suitable and convenient subdistrict as to the amount of territory and the number of children of school age; and provided, that in case the territory is not granted by said independent district of Liberty number eight, then said territory hereby granted shall remain and be a part of subdistrict number five, of the district township of Des Moines."

On the 28th day of April, 1882, the board of the district township of Des Moines, at a special meeting, adopted the following resolution: "It is hereby ordered that all action heretofore taken by the board of the district township of Des Moines, in the formation and organization of subdistrict number nine, in the above named township, is hereby rescinded."

From this action of the board, J. D. Handersheldt appealed to the county superintendent, who upon hearing the case on appeal rendered the following decision: "A resolution passed rescinding an action

which has not as yet taken effect, is legal, but so far as it concerns formation and organization which is already completed, it is illegal." From this action or decision of the county superintendent, J. D. Handersheldt appeals.

It appears from the transcript of the county superintendent that the witnesses were not sworn, as required by section 1834, School Laws of 1880. According to the uniform holding of this department, a failure to take testimony under oath is fatal to the case, even though from its nature it came properly before the county superintendent on appeal.

A brief examination will be sufficient, we think, to show that this action should have been dismissed by the county superintendent for want of jurisdiction, since no appeal will lie when the validity of district organization is involved.

This appeal was taken from the action of the board to the superintendent, for the purpose of determining whether or not the board erred in rescinding their former action creating subdistrict number nine. There was very little evidence bearing on this, the sole issue in the case. Witnesses simply stated that they were or were not in favor of subdistrict number nine.

Such testimony can have no bearing in an action to establish error on the part of the board. Appellants set forth in their affidavit that the county superintendent erred, in that he refused to admit testimony to show that there never had been any legal organization of subdistrict number nine. We think such evidence was properly excluded, and yet it is necessary, to enable any tribunal to arrive at a decision of the case; for if the district was organized according to law, then the board committed error in making an order which operated to discontinue it, and hence to change boundaries of subdistricts at a time of year in which, according to our holding, it cannot be done. Upon the presumption that the district was legally organized, they committed error by making a change of subdistrict boundaries without a majority of the whole board. Section 1738, School Laws of 1880.

It must therefore be determined whether the conditions upon which the board of Des Moines township granted the territory, were fulfilled, or, in other words, it must be known whether or not the independent district number eight, of Liberty, concurred in the transfer of the territory. But neither the county superintendent nor this department is competent to determine the legality of a district organization, and it is therefore impossible for us to decide whether or not the board committed error.

The remedy is an application to a court of law for mandamus to compel the board to recognize the subdirector of subdistrict number nine, as a school officer and member of the board of the district township of Des Moines.

Were the issues involved within our jurisdiction, we would not hesitate to consider them, but as no question of such a nature is connected with the case it is

DISMISSED.

J. W. AKERS,

November 2, 1882. *Superintendent of Public Instruction.*

APPLETON PARK v. INDEPENDENT DISTRICT OF PLEASANT GROVE.

Appeal from Des Moines County.

1. RECORDS: *Impeachment of.* Records not made and certified to by the proper officers as required by law are defective and may be impeached by collateral evidence.
2. CHARGES. Must be clearly sustained by the evidence.
3. TEACHER. The law provides that a teacher shall have a fair and impartial trial, with sufficient notice to enable him to rebut the charges of his accusers.

Appleton Park, a school teacher of Des Moines county, was duly engaged and contracted with to teach the school in the independent district of Pleasant Grove.

He began teaching on the 4th day of September, 1882; after some ten or eleven days had expired, during which time he had taught the school, he was waited upon by the entire board of said district, called to the door and informed that certain rumors were being circulated, to the effect that he had been guilty of using obscene and vulgar language in the presence of his pupils, and during regular school hours. The board called at the school-house again about the hour for closing the school in the afternoon, and the school having been dismissed, they proceeded to examine three of the boys as to the truth of the charges above referred to. The result of this action was that the teacher left the school and the board employed another teacher. Mr. Park appealed to the county superintendent, who reversed the action of the board, whereupon D. L. Portlock, president of the board, appeals.

The principal difficulty presented in this case seems to be to determine just what that action or order of the board was from which the appeal was taken. The transcript filed by the secretary of the board, is as follows: "Complaint being made by some of the scholars to the school board, in regard to the teacher, Appleton Park, using indecent, rough and insulting language during school time, the board met at the school-house to make an investigation. The board stated the above charges to the teacher, Appleton Park, who after reflecting upon the matter, proposed his resignation to the board. The board, after due consideration,

accepted the same. The question being settled in the above way, and no other business before the board, the board then adjourned.

D. L. PORTLOCK, *President.*

F. A. FRIDEMAN, *Secretary.* F. M. STUCKER, H. FLEENOR."

The parol evidence of Appleton Park was admitted to offset and impeach the record. This was clearly in violation of well established law, if the record was really what it purported to be, a true and authenticated copy of the proceedings of the meeting of the board referred to.

Starkie On Evidence, says: "Where written instruments are appointed, either by the immediate authority of law, or by the compact of the parties, to be the permanent repositories and testimony of truth, it is a matter both of principle and of policy, to exclude any inferior evidence from being used, either as a substitute for such instruments, or to contradict or alter them; of principle, because such instruments are in their own nature and origin entitled to a much higher degree of credit than that which appertains to parol evidence; of policy, because it would be attended with great mischief and inconvenience if those instruments upon which men's rights depend were liable to be impeached and controverted by loose collateral evidence." Starkie, part IV, p. 995, Vol. III, 3d Amer. Ed.

The fact that the transcript referred to is not certified to by the secretary, and the further fact that he was not present at the board meeting in question, and wrote the minutes as dictated from memory by the president of the board, three days after the meeting, fully justified the superintendent in ruling it out and in admitting parol evidence.

We come now to consider whether the trial before the board was such a proceeding as is required by section 1734. The board called in the morning and informed the teacher of the charges preferred to them, against him, whereupon he offered to resign. They instructed him to proceed with his school and stated that they would return in the evening. During the day the board worked up their case against the teacher, while he was so employed as to prevent him from giving thought or attention to the charges, or to the preparation of any adequate defense.

We must sustain the superintendent in finding that the trial and opportunity to defend was not what the law intends every teacher shall have. Every teacher is entitled to the sympathy and support of the school board, and where there is any reasonable doubt as to the truth of stories circulated by school children, the teacher should have the benefit of such doubt.

We believe that had the board been in sympathy with their teacher in this instance, they would have decided that the charges were not sustained by the evidence, at least by any evidence which appears of record.

That the teacher offered to resign in the evening does not appear from the evidence offered in behalf of the board, while it does appear that at least one member of the board told him "he had better quit."

We are compelled to hold that the teacher was dismissed, and that in doing so for no sufficient reason the board erred, and the decision of the county superintendent is therefore

AFFIRMED.

J. W. AKERS,

February 16, 1883. *Superintendent of Public Instruction.*

NOTE—Our supreme court rendered a decision regarding the measure of damages resulting from the wrongful discharge of this teacher. The opinion is found in 65 Iowa, 209.

H. D. FISHER v. DISTRICT TOWNSHIP OF TIPTON.

Appeal from Hardin County.

1. SCHOOL-HOUSE SITE. When purchased by the board the provisions of sections 1825–1828 do not apply.
2. LOCATION. May be within less than forty rods of a dwelling when obtained by purchase.

On the 28th day of March, 1884, the board ordered the purchase of an acre of ground for a school-house site on the corner of section 15, township 87 north, range 21 west. H. D. Fisher, who is the owner of land immediately adjoining said site, objected to the location, on the ground that the site was within less than forty rods of his residence. The board adhered to their decision in disregard of his objection, whereupon H. D. Fisher appealed to the county superintendent, who affirmed the action of the board. H. D. Fisher appeals.

Affiant alleges that the board violated law in purchasing a site within less than forty rods of his residence, against his will and without his consent. This was the only error assigned in his affidavit of appeal to the county superintendent, and the same is the only error assigned in the affidavit of appeal to the superintendent of public instruction. The case will therefore be confined to a consideration of the alleged grievance, and all argument of counsel and all evidence taken to establish an abuse of discretion in changing the location of the house need not be considered.

On trial before the county superintendent, defendant filed a motion to dismiss the action for want of jurisdiction. This motion to dismiss was overruled, and defendant excepted. The motion to dismiss was filed on the ground that there had been no order or decision of the district township board from which an appeal could be taken, and no action

taken as shown by the transcript of the record, upon any matter affecting the rights of H. D. Fisher.

The transcript of the secretary states that on the 29th of March the board located the new site on a piece of ground bought of Ferdinand Beckman. This was an action from which any person aggrieved might appeal. The appeal was based on a charge that the board had violated law, and it was proper for the county superintendent to hear the case in order to determine whether the law had been violated or not.

Counsel urges that the case should have been dismissed because affiant made no objection to the location until after the purchase of the land and until after he was estopped for so objecting. But even though the neglect to object in season would bar affiant from subsequent interference, it was the duty of the county superintendent to proceed with the trial in order to determine by evidence when and how objection was made. We think that the county superintendent had jurisdiction, and the motion to dismiss was properly overruled.

In the eighth count of defendant's argument it is urged that the county superintendent had not original jurisdiction to try or to adjudicate a matter not acted upon by the board. But the removal of the school-house to the proposed location was determined by the board, and from that action appeal was taken, and not from their refusal to consider the objection of affiant.

The ground of the defense is the delay of H. D. Fisher to make known his objection to the location of the school-house within forty rods of his dwelling.

The county superintendent sustains the action of the board for the reason that the site was purchased, affiant knowing of the intention of the board to purchase the ground and to locate the house, and making no objection until after the contract to move the house had been let by the board.

Whether the decision of the county superintendent should be affirmed, for the reasons assigned, need not be considered, as the case will be determined upon the construction of the statute prohibiting the location of a school-house within less than forty rods of a dwelling, the owner whereof objects.

The case was tried by the county superintendent and argued by counsel on both sides as coming under the act authorizing boards to condemn, and to take and to hold school-house sites. We think this point worthy of a careful examination. Chapter 124, laws of 1870, first authorized boards to take and hold land for school-house sites. Recognizing that they were conferring a dangerous power, they prudently enacted certain restrictions to govern such boards in the exercise of that power. But it it was not intended, we think, to so restrict boards, except when exercis-

ing the power therein conferred. This chapter was subsequently embodied in the Code, and is now found in sections 1825, 1826, 1827, and 1828, School Laws of 1880.

Section 1825 says: "It shall be lawful for any district township or independent district, to take and hold, under the provisions contained in this chapter," etc. The provisions contained in this chapter, or in the following sections, are as follows: That the real estate so taken shall not exceed one acre. The site "so taken" must be on some public highway, at least forty rods from any residence the owner (of the residence) whereof objects to its being placed nearer. And not in an orchard, garden or public park.

It is perfectly clear that ground cannot be condemned in disregard of any one of these provisions. But the site in question was not condemned and taken, but it was purchased of a third party and a good and sufficient deed made over to the district township of Tipton.

Do the provisions above quoted apply in cases where sites are purchased? If any one of them does, they all do.

First, "the land so taken shall not exceed one acre." No one would hold that boards may not buy, and districts hold, more than one acre of land for school-house purposes, provided they are limited to a reasonable amount. This restriction then, is of no force except in cases where sites are condemned.

Again, "and not in any orchard, garden or public park." Does it follow, therefore, that boards cannot purchase an orchard, garden, or park, for a school-house site if they desire it, and the owner is willing to sell? We think not, by any means.

And "at least forty rods from any dwelling, the owner whereof objects," etc. This limitation has exactly the same force and application, and no other. Land within forty rods of a residence cannot be condemned if the owner objects. But if a third party is willing to sell a school-house site, and the district purchases and pays for it, it is not competent for the owner of a dwelling to restrain the location on the ground that it is within forty rods of such dwelling.

We think this interpretation of the law borne out both by its evident meaning and its phraseology.

We are aware that it has for many years been the holding of this department that a school-house site, whether obtained by purchase or otherwise, could not be placed nearer than forty rods to any residence, the owner objecting, and it is with regret that we must reverse a ruling of so long standing; but from the fact that in many thickly settled communities our school-houses are being crowded into sloughs and out of the way places, and the further fact that it is not warranted by law, we are compelled to do so.

We must, therefore, hold that the board of the district township of Tipton violated no law in purchasing the site and in ordering the removal of the school-house thereon. The decision of the county superintendent is therefore

AFFIRMED.

J. W. AKERS,

July 7, 1884. *Superintendent of Public Instruction.*

EZRA KOONTZ v. DISTRICT TOWNSHIP OF LISCOMB.

Appeal from Marshall County.

1. SUBDISTRICTS: *Form of.* It is very important that subdistricts should be regular in form, and that where it is possible, school-houses should be located at or near geographical centers.

2. SCHOOL-HOUSE SITE: *Location of.* The condition of matters within the subdistrict should govern the location of the house. The attendance of parties from an adjoining subdistrict should not determine change of site.

A petition was presented to the board asking that certain changes be made in subdistrict boundaries, viz.: That the southwest quarter of section eighteen be detached from subdistrict number four, and attached to subdistrict number five; also that the south half of section twenty-one be detached from subdistrict number five, and attached to subdistrict number six. On the 16th day of February, 1884, the board granted the prayer of petitioners and ordered the plat of subdistrict boundaries to be so altered as to agree with the above changes. Ezra Koontz appealed to the county superintendent, who reversed the order of the board. P. T. Beatch, president of said board, appeals.

Subdistrict number five contains a little more than five sections of land, and if the order of the board is sustained it will contain a little more than four and one-half sections. The south half of section twenty-one formerly belonged to subdistrict number six, but was transferred to subdistrict number five in order to create better school facilities for the children of Ezra Koontz, who lives on the extreme south line of subdistrict number six, while the school-house is at the geographical center, and no public road leading to it. The electors of the district township voted $1,000 to procure a highway for the accommodation of Mr. Koontz; but this fund was subsequently transferred to the teachers' fund, and the movement to secure the highway was indefinitely postponed.

Mr. Koontz is unfortunately located, but it appears from the entire proceedings that there is a disposition to remove the obstacles in his way.

This is shown both by the efforts to secure a highway at the cost of $1,000 and in the former action of the board in breaking up the regular form of subdistricts, in order to include him in number five. We think it very important that subdistrict boundaries should be regular, and that where it is possible school-houses should be located at geographical centers.

The action of the board in transferring the south half of section twenty-one to subdistrict number six, and the southwest quarter of section eighteen to number five, was wise, and should have been sustained. Mr. Koontz must seek to secure proper accommodations in number six, and if this proves to be impossible, he must charge it to the account of an unfavorable location.

It cannot reasonably be demanded that his property should be included in number five, and the school-house in that district be moved away from the center and taken to the south line of the district, and away from families living in the north of number five, in order to accommodate others not living in the subdistrict, especially when it is considered that those living in the north will be compelled to send out of their own subdistrict, in such case.

We are compelled to hold that the action of the board should have been sustained, and the decision of the county superintendent is therefore

REVERSED.

J. W. AKERS,

July 21, 1884. *Superintendent of Public Instruction.*

J. L. MARSHALL *et al.* v. DISTRICT TOWNSHIP OF MARSHALL.

Appeal from Louisa County.

1. SUBDISTRICT. The board may not redistrict so as to abolish a subdistrict, with intent to prevent the building of a house provided for by the electors.

2. TAXES: *School-house.* Must be certified, collected, and expended, in accordance with the vote of the electors.

On the 22d day of February, 1886, the board abandoned subdistrict number four, and transferred its territory in parcels to adjoining subdistricts. J. L. Marshall *et al* appealed to the county superintendent, who reversed the order of the board. N. W. Mackay, president of the board of directors, appeals.

It is unnecessary to consider the real merits of this case. The board must be reversed upon the ground that at the meeting of the electors of subdistrict number four, held in March, 1885, a tax of $300 was voted to build a school-house in said subdistrict number four.

It appears in evidence that this tax was voted, properly certified by the district board and levied by the board of supervisors, and that a portion, at least, has been collected. It is not competent for the board to defeat a vote of this kind by districting the subdistrict out of existence. The money must be expended in accordance with the vote, and the house must be built. Whether or not any of the tax has been collected is not material. It must be collected and expended by the board as directed by the people.

The case of *Benjamin v. District Township of Malaka et al.*, 50 Iowa, 648, is applicable here. The only point of difference being that in the case cited the tax had been collected before action was had by the board.

In this case a part only of the tax has been collected, but as stated above, this is not material. The equities of this case may be with the board, but the action of the electors in voting to build a house in subdistrict number four, and in providing the means, will bar the board, and any act calculated to avoid their mandatory duty is a violation of law.

AFFIRMED.

J. W. AKERS,

September 16, 1886. *Superintendent of Public Instruction.*

J. B. B. BAKER v. INDEPENDENT DISTRICT OF WAUKON.

Appeal from Allamakee County.

RULES AND REGULATIONS. In establishing and enforcing regulations for the government of scholars, the board have a large discretion.

On the 7th day of June, 1886, Maud Baker, the daughter of the plaintiff, was suspended from the public school for repeated violation of a rule of the board, known as rule five, which reads as follows: "Any scholar who shall be absent five half-days in four consecutive weeks, without any excuse from parent or guardian satisfactory to the teacher that the absence was caused by said pupil's sickness, or by sickness in the family, or, in the primary grades, by severity of the weather, shall forthwith be suspended. No pupil so suspended shall be reinstated without a permit from the principal."

Rule twelve provides that the principal of the school may suspend pupils temporarily, and that he shall immediately notify the parent or guardian of a suspended child of such suspension, the notice to be in writing, and furthermore, that he shall immediately inform the board of his action.

Maud Baker was absent without excuse, and when called to account for her absence stated that she had gone on a fishing excursion, and expected to go the week following. Having failed to render a satisfactory excuse, she was suspended, as above stated. Notice in writing was sent to the parent, as required by rule five, and the board informed of the suspension. The board approved the action of the principal. J. B. B. Baker appealed to the county superintendent, who reversed the action of the board. D. W. Reed appeals.

The facts in the case are not controverted. It appears in evidence that the suspension of Maud Baker was reported to the board, and that a special meeting of the board was held for the consideration of the act of the principal. Maud Baker was present at this meeting of the board, and the president testifies that he read to her the rule under which she had been suspended, and asked her to give the board some promise of amendment in the future, as a condition of reinstatement, and she replied that she would not make any promise for the future, and expected to go fishing the following week.

The county superintendent finds that the suspension was made in compliance with the rules of the board for the government and regulation of their schools, and that the act of the principal in suspending, and of the board in approving his action, was without prejudice or malice. The board was reversed on the ground that the law does not confer upon the principal, or the board, power to suspend for the cause for which Maud Baker was suspended.

The case turns, therefore, upon the power of the board to establish and enforce a rule providing for the suspension of pupils, who are absent a given number of days, or half-days, without a satisfactory excuse. This point has been fully discussed and settled by our supreme court in the case of *Burdick v. Babcock*, 31 Iowa, 562, and need not be considered here. *Murphy v. Independent District of Marengo* has been cited, but does not apply, as in that case it is stated that the offense for which the pupil was dismissed was not in violation of any rule or regulation.

We are compelled to overrule the decision of the county superintendent, and to sustain the action of the board.

REVERSED.

J. W. AKERS,

October 23, 1886. *Superintendent of Public Instruction.*

James Tompkins v. Independent District of Keystone.

Appeal from Page County.

1. School-house Site. It is manifestly unwise for the electors to express any preference for a site, by a vote. The remedy of any one aggrieved by the action of the board is appeal.
2. ———. The board are bound to take into account any special reasons existing which favor a particular location, and a vote of the electors to expend school-house funds in a certain specified manner, may not with safety be disregarded.

On the 24th of May, 1886, the board located the new school-house in said independent district upon the site of the old house. At the meeting of the electors on the 12th of March, 1884, the sum of one thousand dollars was voted to build a school-house in Page Center. The board regarded the designation of the site as advisory only, and located the house one-half mile from Page Center. James Tompkins appealed to the county superintendent who found that the board had violated law, and for this reason reversed their action. G. W. Stanage appeals.

Section 1724 confers upon boards the power to locate school-house sites. If, however, the location of the school-house is coupled with and designated in the vote to build, the house must be built in accordance with the vote. The transcript of the record filed by the secretary contains the following statement: "Voted a tax of one thousand dollars for the purpose of building a school-house in Page Center."

While any attempt on the part of the electors to designate the precise location of a school-house site would be an unwarranted assumption of power, nevertheless a vote to build a house in a certain village or town plat, in connection with the vote to appropriate money for that purpose, we think so far concludes the board as to location as to require the selection of a site within such specified limits. Any other holding would open the way to fraud and deception. We are compelled to hold that the board should have selected a site in Page Center.

The decision of the county superintendent is

Affirmed.

J. W. AKERS,

November 1, 1886. *Superintendent of Public Instruction.*

E. G. Lewis v. District Township of Woolstock.

Appeal from Wright County.

School-house Site. *Location of.* A village in a subdistrict has special claims favoring the selection of a site within its limits. The element of distance to be traveled by some is largely overcome by the advantages of a location in the town.

The board were petitioned to remove the school-house in subdistrict number three to a site at, or near, the village of Woolstock, which is situated on the western half of the said subdistrict. The petition was denied. E. G. Lewis, *et al.*, appealed to the county superintendent. The decision of the board was reversed. B. Watkins appeals.

The school-house in subdistrict number three is now centrally located, and nearly one mile from the village by traveled highway. There are about fifty-three children of school age in the district, and it appears from the evidence that forty-five of these live within one-half mile of the proposed new site. The removal of the house may increase the distance now traveled by the children of a few families, but it appears that in such cases accommodations may be had within about one and one-half mile at other schools.

If the nature of the case is such as to require some changes in the boundary lines, we think such changes should be made, and the school-house located in the village, and for the following reasons: The children from the rural portions of the district can travel to and from the village much more conveniently than those from the village can attend in the country. The course of trade brings the parent to the market in the morning, and the movement of conveyances will therefore afford many conveniences toward reaching the school from the country, and of returning in the evening. But, on the other hand, there is no regularity of travel to the country in the forenoon, so that when walking is bad, or impossible, conveyances would be required for the sole purpose of taking children to the school. Besides, the great majority of those who live in the village have no means of carrying their children a distance to school, while the farmer is seldom, if ever, without them.

There is a reason why the school should be convenient for children in the village, which does not exist as to children of the country. The village has many evil resorts, where children are led into vice, which are not incident to the country. All children should be kept regularly in school, but the reasons for this, as applied to village and town children, are much stronger than as applied to those of the country.

The village must be supplied with a school, and in the case before us, if the house is not located at the village, the result in the near future will be two schools for this subdistrict. We are compelled to hold that the board erred in refusing to grant the petition. The decision of the county superintendent is

AFFIRMED.

J. W. AKERS,

September 14, 1887. *Superintendent of Public Instruction.*

J. A. COUSINS v. INDEPENDENT DISTRICT TOWNSHIP OF SPIRIT LAKE.

Appeal from Dickinson County.

SCHOOL-HOUSE: *Removal of.* The removal of an old house away from the geographical center and away from the center of population, without special and strong reasons therefor, is an abuse of the discretionary power of the board.

On the 6th day of April, 1887, the board passed an order to move the school-house known as the Swailes school-house, to a point one-half mile west of its present location. From this order J. A. Cousins appealed to the county superintendent. The action of the board was sustained. J. A. Cousins appeals.

The district borders on Spirit and adjacent smaller lakes, and is very irregular in its boundaries. There are about fifty children of school age living in the district, most of whom are favorably or adversely affected by the change. But, considering both locations, there is no material change in the distance traveled by all.

The present site is at the junction of an east and west road, known as the Diamond Lake road, with a north and south road known as the Emmet County road. The school-house is old and has recently been repaired at a cost of $60. As now located there are seven children two miles from the school-house. Twelve children will be two miles from the new site. We are unable to find in this case any good and substantial reason for this change of location.

The present site is central and nearer the center of population, so far as we can determine from the map submitted as a part of the transcript. It is at a cross roads, which is very desirable. The lease to the present site expires in about five years. By that time the old house will in all probability be worthless and a new one will be needed to take its place.

The electors at their last March meeting voted to build a new house on section nineteen, the site of which is one-half mile west and one and three-fourth miles north of the present site.

We cannot avoid the conviction that in moving an old house one-half mile at an expense of ninety dollars, away from the geographical center, and away from the center of population, without special and strong reasons therefor, is an abuse of discretionary power.

The decision of the county superintendent is

REVERSED.

J. W. AKERS,

September 19, 1887. *Superintendent of Public Instruction.*

D. A. BOYER *et al.* v. INDEPENDENT DISTRICT NUMBER TWO, DUTCH TOWNSHIP.

Appeal from Washington County.

1. BOARD: *Discretionary power of.* In the absence of proof that the board have abused the authority given them by the law, their orders will not be set aside, although another decision might to many seem preferable.

2. SCHOOL-HOUSE SITE: *Location of.* When purchased, the provisions of section 1825 do not apply. The district stands in the same relation to the public and to individuals, in this respect, as do other corporations, and may purchase and convey real estate accordingly.

On the 23d day of July, 1887, the board made an order that the school-house site should be changed from its present site, which is near the southwest corner of the northwest quarter of the northwest quarter of section ten, to the southeast corner of section four, and about ninety rods due north. It was also ordered that a new school-house should be built on the new site. From this order of the board, D. A. Boyer and others appealed to the county superintendent. The order of the board was reversed, on condition that appellants should secure the opening of a public road from the present site of the school-house to the public road running east and west through the southern portion of the district, and along the south line of sections nine and ten. William Stevenson and S. D. Carris appeal.

The independent district in question is composed of sections thirty-three, thirty-four, three, four, and the north half of sections fifteen and sixteen. Public roads enter east and west along the north line of sections three and four, and along the south line of the same sections. On this latter highway the new site is located. From the new site a road extends due south to the old site. This is the road, the extension of which is made a condition in the decision of the county superintendent.

The population of the district is mostly along the last named east and west highway, and in sections nine and ten lying immediately south of

said highway. At the annual meeting, or election of the independent district in question, held March, 1887, a motion was made to vote a tax of $600 for the purpose of building a school-house on the old site. This motion was lost. A motion was then made and carried that a tax be levied to build a school-house, no site being specified. This was followed by a motion to build the house on the present site, which motion was lost.

At a special meeting held June 18, 1887, a motion was made and carried to procure a new site, and at another special meeting held July 23, 1887, the site of the new house was finally located on the southeast corner of section four. It appears that the electors were very much divided in opinion as to the location of the new house, and the majority attending the March election were opposed to locating it upon the old site. If the house was to be moved to the north, the site selected by the board is as near, or practically so, as the board could have selected. There is a slough just north of the present site, and if moved at all the house must be placed to the north of this, which would compel the selection of a site within a few rods of the new site.

The present site is practically central both as to geographical center and center of population, and it would seem that the presumption was in favor of the present site, while the one selected by the board is not objectionable on account of its location, unless the fact that it is not exactly central constitutes an objection. Boards are given large discretion in such matters, and it has been a rule of long standing in this department not to overrule the order of the board, except in cases where an abuse of discretion is clearly established. While the old site may be equally good and even better, we cannot set their order aside, in the absence of evidence going to show that they have abused the authority which the law gives them.

The county superintendent held that the board had violated the provisions of the law in locating the new site nearer than forty rods to a dwelling the owner whereof objects. The board in this case located the site within eighteen rods of a residence, and it is conceded that said owner refuses her consent to such location. Section 1826 provides that a site taken as provided in section 1825 must be at least forty rods from any residence the owner whereof objects to its being placed nearer.

Section 1825 provides: "It shall be lawful for any district township or independent district to take and hold, under the provisions of this chapter, so much real estate as may be necessary for the location and construction of a school-house and convenient use of the school; provided that the real estate so taken, otherwise than by the consent of the owner or owners, shall not exceed one acre." In the case of *H. D. Fisher v. District Township of Tipton* it was held that the provisions of the act

authorizing boards of directors to "take and hold" land for a school-house site, do not apply when the land has been obtained by purchase.

Counsel for appellee argues that the language of the statute, the words "take and hold," includes acquiring title by purchase as well as by condemnation, and that section 1825 is the only provision of law we have authorizing school districts to purchase and own school-house sites. Also that the restriction that a school-house shall not be placed nearer than forty rods to a dwelling, the owner objecting, applies no matter how the site is obtained.

We cannot concur in this opinion. A school district is a corporate body, the nature and powers of which are well and clearly defined in the statute which created it. If land sufficient for a school-house site is necessary to enable a district to establish and maintain schools, it needs no argument to establish their authority to purchase such land. 44 Iowa, 564; 69 Iowa, 533. That it was the intention of the lawmakers to confer this power upon school districts is evident from the fact that in section 1717 the electors were given the power to vote a tax for the purchase of grounds, etc. And this law was enacted many years before the law empowering boards of directors to "take and hold" school-house sites. Counsel for appellee will hardly insist that previous to the enactment of the condemnation law, all school-house sites were acquired and owned without authority of law.

There appears to be two ways by which school districts may acquire title to land for school-house sites. The statute gives to every school district, as a general and corporate power, the right to buy land for school purposes, and when land has been so purchased, the title or fee is in the corporate name of the district, and even though it ceases to be used for school purposes, it remains the property of the school district until sold by the board in obedience to the instructions of the electors. They may sell to any one and for any purpose whatever.

Second, by condemnation by the board of directors under section 1825. The title to land acquired under this law is for school purposes only. It cannot be sold at all. When the district ceases to use it for school purposes, it reverts by operation of law to the owner of the fee. It appears that the fee to land obtained by condemnation is not in the school district, but simply the right to hold it for school purposes, while the fee remains in the original owner, and may be conveyed subject to the title of the district.

Sites obtained by purchase never revert, and the district so purchasing owns the fee and may transfer it, as has been said, to any person and for any purpose. It is clear to us that the four restrictions or limitations, viz.: that the real estate "so taken" shall not exceed one acre; must be on a public highway, forty rods from the residence, etc., and not in any

orchard, garden or public park, apply only to sites obtained by condemnation under sections 1825–1828 inclusive, and that they do not apply to sites obtained by purchase. The reasons for this position are fully set forth in *Fisher v. District Township of Tipton*, to which reference is had.

We are unable to discover any violation of law or abuse of discretion which would warrant us in setting aside the order of the board.

REVERSED.

J. W. AKERS,

November 18, 1887. *Superintendent of Public Instruction.*

A. J. HOSINGTON v. DISTRICT TOWNSHIP OF UNION.

Appeal from Madison County.

1. APPEAL. The failure to file the transcript within the time mentioned in the law will not invalidate the appeal.
2. ADDITIONAL SCHOOL. It is the intention of section 1725 that an attendance of at least ten scholars may reasonably be expected.

It appears that at the regular meeting of the board held September 19, 1887, E. O. Storrs and others presented a petition for an extra school for their convenience. On motion said petition was taken up and granted. From this action A. J. Hosington appealed to the county superintendent, who heard the case in due form, reversing the action of the board. E. O. Storrs and others appeal.

Counsel for appellant urges as error that the district secretary failed to file his transcript of the record within the ten days required by section 1832. The appellants claimed that the county superintendent had, on this account, lost jurisdiction, and moved to dismiss the case. The county superintendent overruled the motion. Did he commit an error in so doing? We think not. It is true as alleged by appellants that after the expiration of the thirty days mentioned in sections 1830–1835, the county superintendent cannot entertain an appeal. The action referred to in these sections lies within the choice of the aggrieved party, the law grants him thirty days within which to make his election. The action referred to in section 1832 is mandatory upon the secretary, he has no choice, he cannot elect one of two courses of action. If he fails to do his duty within the prescribed time a writ of mandamus may compel him to act. But in no case does his failure to produce the transcript invalidate the appeal or lessen the duty of the county superintendent to proceed in the case.

Did the county superintendent err in taking into account the financial condition of the district township? We cannot admit that he did. While

the want of funds will not excuse a board from maintaining schools, this department has held that the financial conditions should be considered in ordering an extra school. In this case the secretary testifies that the funds available will not more than meet the expenses of the seven schools now in session.

The original petition shows twelve pupils of school age for whose accommodation the school is desired. This department has held that the intention of the present section 1725 is that there must be a probable attendance of ten to warrant the board in establishing an extra school. What are the facts in this case as gathered from the evidence? One child included is two years old. In a family having five of school age but three are at home. One of the others is a graduate of the Winterset high school, and the other is an attendant at the same school. The probable attendance in the extra school would be only four or five.

Under all the circumstances we believe the board did not act with due discretion, and that the county superintendent was fully justified in reversing their action. The decision of the county superintendent is therefore

AFFIRMED.

HENRY SABIN,

February 22, 1888. *Superintendent of Public Instruction.*

N. R. JOHNSTON v. DISTRICT TOWNSHIP OF UTICA.

Appeal from Chickasaw County.

1. MANDAMUS. To compel the performance of an official duty, appeal sometimes consumes valuable time. Mandamus is often a more speedy as well as a better remedy.

2. DISCRETIONARY ACTS. Action by the board unduly delaying the final consideration of an important matter, may be regarded as an evidence of prejudice.

The issues involved in this case were the formation of a new subdistrict to be known as number twelve, and the providing for a school during the winter of 1887–8, pending the election of subdirector for the new subdistrict. The case came in due order to the county superintendent on appeal, and from his decision the township board appeal to this department.

At their meeting on the 19th day of September, 1887, the board had before them a petition signed by Caleb Boylan and others, to redistrict number two, and to form a new subdistrict. After various motions it was voted to adjourn to the second Saturday in February, 1888, to consider said petition. Appeal was taken to the county superintendent.

At the trial before that officer, October 27, 1887, and adjourned to October 31, a motion was made to dismiss the case, on the ground that the matter was still pending before the township board, as no final action had been taken by that body. The motion to dismiss was overruled, and the county superintendent proceeded to hear the case. Did the county superintendent commit an error? We think not.

Without impugning in any way the motives of the directors, their action in adjourning to a date as late as the second Saturday of February, 1888, was calculated to delay and defeat the prayer of petitioners. The aggrieved parties had an undoubted right to appeal, but we regret that they did not avail themselves of the more speedy remedy of resorting to the courts. A writ of mandamus would undoubtedly issue in such a case, compelling the directors to perform their enjoined duty.

A motion to dismiss on the ground that there was no evidence to show that the board acted with passion, prejudice, or injustice, was also very properly overruled. The action of the board delaying the whole matter until the second Saturday of February, 1888, was in our opinion an act of manifest injustice, which the county superintendent very properly took into account in making up his decision.

The county superintendent reversed the action of the township board and ordered the new subdistrict, number twelve, to be formed, with an extra school for the winter of 1887-8, in accordance with the prayer of the petitioners. Ought his decision to be sustained?

A careful review of the evidence in the case including the plat "exhibit A," shows that the township of Utica is divided into eleven subdistricts, some of them very large and irregular in shape. A better division than that proposed by the formation of the new subdistrict, number twelve, can possibly be made. The county superintendent however provides for this, as his decision does not prevent any changing of the boundaries of subdistrict lines, if necessary to facilitate the school privileges of the township.

A new subdistrict is needed to furnish reasonable school facilities for the children in that neighborhood, and so far as ordering the new subdistrict, to be known as number twelve, is concerned, the decision of the county superintendent is

AFFIRMED.

HENRY SABIN,

March 15, 1888. *Superintendent of Public Instruction.*

N. R. Johnston v. District Township of Utica.

Appeal from Chickasaw County.

Application for a Rehearing.

Rehearing. To justify the granting of a new trial, a reasonable doubt must arise in the mind of the officer to whom application is made, as to the absolute correctness of his former conclusions.

Comes now the appellant, the district township of Utica, and asks for a rehearing of the above case.

The acts of a board are recognized as mandatory or discretionary. When they are mandatory, and the board act in accordance with the law, the aggrieved party has no remedy whatever; when they are discretionary the aggrieved party has a remedy in an appeal, which may be taken eventually to the superintendent of public instruction, whose decision is final.

Now, to say that the discretionary acts of a board must be sustained because they are discretionary, destroys the right of appeal and takes away the last remedy of the aggrieved party. The action of the directors should be sustained, unless they act through passion, prejudice, or manifest injustice. Who is to decide whether their action is an abuse of discretionary power? Surely not the board themselves, nor the aggrieved party.

The question is one upon which the county superintendent may be called to pass, and from his decision an appeal may be taken to the superintendent of public instruction. If the county superintendent in the discharge of his duty determines that the board of directors have abused their discretionary powers, he has power to reverse their action, and this department should affirm his decision if his conclusions are found to be correct.

In the present case the board, at the meeting on the 19th of September, 1887, had before them a petition asking for the formation of a new subdistrict, and a school during the winter of 1887-8. They postponed the consideration of said petition until the second Saturday in February, 1888. The aggrieved parties had their choice between two remedies. They could apply for a writ commanding the board to act, or they could appeal to the county superintendent. They chose the latter; they could have chosen the former. See case of *Crookshank v. District Township of Maine*, School Law Decisions 1888, page 88. Also 35 Iowa, 445, and 71 Iowa, 632.

It is not claimed that the writ could control the action of the board, but it could compel them to act in the premises. See *Hightower v. Over-*

houser et al., 65 Iowa, 350, *Albin et al. v. Board of Directors of West Branch*, 58 Iowa, 77, and *Case v. Blood et al.*, 71 Iowa, 632.

The attorney for the board of directors cite the case of *Marshall v. Sloan*, 35 Iowa, 445, in support of their position. In that case the directors acted, they rejected the petition and their action was a matter of record. In the case under consideration the directors postponed action in such a way as to delay and possibly defeat the purpose of the petitioners. In the present case the county superintendent reversed the action of the board, because of the injustice done to one party through the delay in their action, and also did only, on appeal, what the party appealed from had power to do.

Upon reviewing the case carefully the second time we find that the county superintendent reached a correct conclusion as to the action of the board, and nowhere exceeded his authority. The application for a rehearing is therefore denied.

HENRY SABIN,

March 26, 1888. *Superintendent of Public Instruction.*

JACOB DECK *et al.* v. DISTRICT TOWNSHIP OF EDEN.

Appeal from Decatur County.

1. SUBDISTRICT BOUNDARIES: *Change of.* A case involving a change of subdistrict boundaries, having been adjudicated by the county superintendent reversing the action of the board, and being affirmed by the superintendent of public instruction, cannot again be brought upon appeal, unless it can be shown that some change materially affecting the conditions of the case has taken place since the date of the former decision.

2. ———: ———. A subdistrict long established, embracing a territory having a sufficient number of scholars to maintain a good school, should not be abolished, unless the general school facilities of the township will be improved thereby.

On the 19th day of September, 1887, the board voted to abolish subdistrict number eight. Jacob Deck and others appealed to the county superintendent, who on the fifth day of December rendered a decision reversing the action of the township board. The directors of said district township appeal.

The counsel for the directors urged in their written argument that the county superintendent should be required to send up to this department all the evidence taken in the trial before her. It was certainly the duty of the county superintendent to send up all the evidence upon which she based her decision. In the absence of any proof to the contrary, the

presumption is that the transcript furnished by her contains all the testimony on file in her office. There is no proof offered that she has not complied with the law in all respects.

On the 26th day of December, 1885, the county superintendent rendered a decision reversing the action of the board in abolishing subdistrict number eight. As no material changes have taken place since then, in the condition of the township, does that former decision act as a bar to any further proceedings in this case? We think not.

The principle enunciated here is undoubtedly correct. A case involving a change of subdistrict boundaries, having been adjudicated by the county superintendent reversing the action of the board, and being affirmed by the superintendent of public instruction, cannot again be brought upon appeal, unless it can be shown that some change materially affecting the conditions of the case has taken place since the date of the former decision.

In this case, however, the decision of the county superintendent cannot act as a bar to further proceedings, because the district board did not take an appeal. Such proceedings cannot be considered as final until they have been affirmed by the superintendent of public instruction.

It is urged that the county superintendent erred in taking into consideration the distance which many of the pupils must travel in order to reach their school, if the action of the township board abolishing subdistrict number eight, is affirmed. The law does not contemplate that one and one-half miles is in all cases an unreasonable distance. It depends largely upon the age of the pupil and upon the condition of the roads. In the case before us a natural obstacle, the Little Turkey river, must be taken into consideration. The opening of additional roads and the construction of a bridge would simplify matters somewhat, but no steps have been taken to accomplish this. Until this is done, to abolish the school in number eight would impose an undue hardship upon a large number of pupils.

What are the conditions of the school as at present constituted? The report of the secretary put in evidence, shows that the school in number eight will average with other subdistricts in the number of pupils enrolled; it is above the average in daily attendance, and below the average in cost of tuition. The board fail to show that reduced numbers render it expedient to abolish this subdistrict, nor do they show that the township is excessively taxed to support their schools.

This department has already ruled that subdistrict lines, which have been long established, embracing a territory having a sufficient number of pupils to maintain a good school, should not be disturbed, unless it can be proved that the general school facilities of the township will be improved by the change.

The board do not show that there is any general benefit to be expected from the proposed change of boundaries, nor do they prove that any existing necessity makes it desirable. The board undoubtedly intended to act fairly toward all, but we think they failed to properly consider all the circumstances involved in their action. The decision of the county superintendent is therefore

AFFIRMED.

HENRY SABIN,

March 16, 1888. *Superintendent of Public Instruction.*

J. S. FOLSOM *et al.* v. DISTRICT TOWNSHIP OF CENTER.

Appeal from Cedar County.

1. REHEARING. To warrant a rehearing, some valid reason must be urged.
2. SCHOOL-HOUSE SITE: *Relocation of.* When it is the evident intention of the board to relocate the site as near as possible in the center of the subdistrict, in order to furnish equal school facilities to all the residents, their action should not be materially interfered with.

The transcript in this case shows that on the 21st day of March, 1887, at a meeting of the board, a committee was appointed to investigate the needs of subdistrict number two and report at the meeting in September. It further shows that on the 19th day of September, 1887, such committee reported, recommending that the new house be built for said subdistrict, to be located in the center of the district. The report was received and the committee discharged. The report was also upon motion laid upon the table.

On the 19th day of March, 1888, at a meeting of the directors the above report was finally adopted and a building committee was appointed to confer with the county superintendent in regard to plans and specifications. From this decision of the board Folsom *et al.* appealed to the county superintendent, and the case was heard at Tipton on the 9th day of April, 1888. The records in the county superintendent's office show that the appellee consented to the filing of an amendment to the affidavit by appellant, and that the appellee filed a motion to modify the decision of the board, and the trial then proceeded. On the 11th day of April the county superintendent filed a decision reversing the action of the board. On the 17th day of April, 1888, a motion was filed for a rehearing, within the time given by the county superintendent. On the 19th day of April, 1888, the motion for a rehearing was argued before the county superintendent and overruled. From the decision of the county

superintendent the board appealed to the superintendent of public instruction, and the whole case came up on a hearing before him on the 5th day of June, 1888.

The first question to be decided is: Did the county superintendent err in overruling the motion for a rehearing? A rehearing of such a case can be granted only when it can be shown that some injustice has been done, or some mistake has been made which can be corrected by a new trial; or when some additional evidence has been discovered which is in favor of the party applying, but which could not have been presented before by reasonable diligence. The affidavit upon which the motion for a rehearing was based failed to show any such reasons. All the main points alleged therein had already been ruled upon by the county superintendent, and we think she did not commit any error in overruling the motion. This also disposes of all the testimony sent up in support of the motion for a rehearing; these affidavits will not be taken into account in the final decision of the case.

It is not necessary here to determine the legal residence of William Busier. His own testimony is that the distance from his residence to the site selected by the board is one and one-fourth miles. The fact that Mrs. Morgan does not desire to send to school is not material. It is not the individual but the residence that is to be considered. Some other person living at the same place may hereafter desire school privileges.

We are now free to approach the main question upon which issue is joined. The testimony shows that the directors desired to relocate the school-house in subdistrict number two in a more central location, no other reason is assigned for the contemplated removal. There is nothing to show that the present site is unsuitable, except that it does not well accommodate the pupils from the northern part of the district. In this determination to relocate the site near the center, there is no evidence of any abuse of discretion on the part of the directors, and we think their action should not be interfered with.

There is, however, evidence which shows that the exact acre which the committee staked out, is not a desirable site for a building. The board themselves acknowledge this in their amended order by which the site is removed ten rods farther north.

The county superintendent, in her decision, locates the site upon a piece of ground known as the "grave-yard site." It is urged that the county superintendent has only appellate jurisdiction, and must therefore confine her decision to the two sites upon which the parties joined issue. She seems to have entertained some such idea, as she sustained a motion to rule out all evidence in regard to the unsuitableness of the grave-yard site when such evidence was offered on the original trial. We think she erred, and that such evidence should have been admitted.

In April, 1886, the Hon. O. Faville, then superintendent of public instruction, obtained this opinion from Hon. F. E. Bissell, then attorney general. "The case does not come before him (the county superintendent) merely to correct an error of the board of directors, but to hear and decide the same matter that the board had decided. The county superintendent is not limited to an affirmance or reversal of the action of the board, but he determines the same question that the board determined." See also *John Clark v. District Township of Wayne*, page 47, School Law Decisions of 1876.

To this opinion the decisions of this department have always conformed. The county superintendent therefore did not go beyond her jurisdiction in selecting a site different from any which had been considered by the board.

We cannot see, however, that the grave-yard site has any advantage over the old site. It is irregular in shape, and is about as far north of the center of the subdistrict as the present site is south. In fact, its selection as a site for the new building defeats the very end which the directors had in view in their action locating the site in the center of the subdistrict.

The case is remanded to the board, with instructions not to build upon the site selected by the committee, but to select the best site possible within a distance not more than forty rods from the center of the site staked out by the committee; the south corner of said site, however, to be at least fifteen rods north of the south corner of the committee's site; said site also to contain not less than an acre, and to be as nearly square in form as the circumstances will admit.

The decision of the county superintendent is

REVERSED.

HENRY SABIN,

June 7, 1888. *Superintendent of Public Instruction.*

P. O'Connor, Jr., v. District Township of Badger.

Appeal from Webster County.

1. Jurisdiction. In most matters with which boards have to do under the law, their authority and responsibility are absolute, and their jurisdiction is complete and exclusive.
2. ————. A former order of the board, or a decision of the county superintendent on appeal, will not operate to prevent the board from exercising their discretion anew, when good reasons exist for such action.
3. Rehearing. To obtain a rehearing the necessity must be clearly shown.
4. Discretionary Acts. In the exercise of discretion, the benefit of every reasonable doubt must be given in favor of the correctness of the official acts of the board.

At a special meeting of the board held February 10, 1888, it was voted to remove the school-house in subdistrict number seven, forty rods north from its present site. P. O'Connor, Jr., appealed to the county superintendent, who heard the case on the 23d day of April and affirmed the action of the board. P. O'Connor, Jr., appeals.

The proceedings in this case are regular and the facts admitted by both parties. The only point in dispute is this: On the 10th day of November, 1887, the county superintendent heard the same case and rendered his decision reversing the action of the board. As the directors did not see fit to appeal, and as no material changes have taken place in the subdistrict, it is claimed that the decision of the county superintendent rendered November 10, 1887, must be considered as final, and that no further proceedings can be had in the case. If this allegation is true then the county superintendent committed error in not dismissing the case.

Let us examine it a moment, that we may arrive at the intent of the law. It is plain that the law reposes great confidence in the discretionary acts of a board of directors. The instructions from the department of public instruction to county superintendents have always been that such discretionary acts are to be affirmed unless it can be very clearly shown that the board have in some way abused their powers; if there is a doubt even, the board are to have the benefit of it. It has become a well established principle that the conduct of the schools and the location of school-houses should be left with those officers who have the closest relation to the people for whose benefit the schools are maintained. With this principle this department is not willing to interfere.

Is it right, then, that in this present case because the county superintendent reversed the board in November, 1887, they should be left without further remedy? We think not. After their former action was reversed, the board had their choice of three courses of action; they were bound to take the one which they believed to be for the best interests of the subdistrict.

They could ask for a rehearing, but to obtain that they must be able to show that some very grave mistake had been made, or that they had discovered some additional evidence which could not have been presented before by using reasonable diligence.

They could appeal to the superintendent of public instruction, but in that event they must base their case wholly upon the evidence as presented before the county superintendent, since this department has no right to hear any additional testimony.

They could begin the case *de novo,* amend their record if it was faulty, supply omissions, introduce new testimony, and perfect their proceedings in such ways as to obtain if possible a different decision from the county superintendent; or so as to make a stronger case before the superintendent of public instruction if either party found it necessary to appeal to him.

In this case the directors chose the last remedy, and we think they were wise in doing so, as the most ready manner of obtaining a final adjudication of the whole matter.

After careful study of the authorities cited by counsel, we can only reach this conclusion. If the aggrieved party fails to appeal within the thirty days allowed by the law, the decision of the county superintendent becomes final as far as that particular case is concerned; but we find nothing in the law to warrant the conclusion that a reversal by the county superintendent acts as a bar to any further proceedings because the district board did not then and there take an appeal to the superintendent of public instruction. Such a conclusion would defeat the ends aimed at by the law in placing the management of the schools in the hands of the school officers as chosen by the people. The county superintendent and the superintendent of public instruction, in hearing these appeal cases have the jurisdiction somewhat, of a court of equity and are not bound by a rigid adherence to the technical forms and customs which prevail in the courts of justice.

In reaching this conclusion we are supported by the case of *Morgan v. Wilfley et al.*, 70 Iowa, 338. "The power to redistrict and change subdistricts is conferred upon the board by the statute, and action in that direction, for sufficient cause, cannot be considered as unauthorized." The power to change or fix the school-house site is conferred in the same manner. Further: "The board of directors cannot be so fettered by its

prior action, or by legal proceedings, that it may not, at any time, for sufficient cause, redistrict the township, as in its best judgment may be demanded by the interest of all the children of the district." The principle here enunciated is so broad that it applies to all the actions of the board, and it is not necessary to dwell upon it.

In regard to the merits of this case, there is nothing to be said. There is no evidence to show that the board abused their authority, and consequently no reason for setting their order aside. The decision of the county superintendent is

AFFIRMED.

HENRY SABIN,

July 9, 1888. *Superintendent of Public Instruction.*

INDEPENDENT DISTRICT OF EDNA GROVE v. INDEPENDENT DISTRICT OF EDNA *et al.*

Appeal from Cass County.

ASSETS AND LIABILITIES. When an entire township is organized into independent districts, the settlement of assets and liabilities is made by the boards of the newly created independent districts.

It appears that in the year 1886 the district township of Edna was organized into an independent district township. This district was afterwards subdivided into nine independent districts, in accordance with chapter 133, laws of 1878, as amended by chapter 131, laws of 1882. On the 9th day of March, the directors of the old independent district of Edna made a division of assets and liabilities, among the said nine independent districts. From this action the independent district of Edna Grove appealed to the county superintendent. The appeal was heard on the 3d of May, 1888, and a decision rendered by the county superintendent upon two points.

That while the county superintendent has jurisdiction in such cases whenever directors abuse their discretionary powers, he may not render a judgment for money. In this there can be no question of the correctness of his decision. If the independent district of Edna Grove feel aggrieved in the apportionment of the assets, their only remedy is to be found in the courts. The law gives the county superintendent no power to interfere in the distribution of the assets.

The county superintendent also found that the directors of the independent district of Edna, the old board, had no power to distribute the assets and liabilities, and therefore dismissed the case. Was he correct in this decision? Previous to the year 1876 the law provided that in case

of reorganization in independent districts, the old board of directors of the district township should make a division of the assets and liabilities. The sections providing for reorganization of independent districts, 1815–1820, were amended by the sixteenth general assembly and the present sections 1815–1820 enacted in their place.

Section 1820 as it now stands provides explicitly that the respective boards of directors shall make an equitable division of the assets and liabilities. The law relating to subdivision of independent districts, chapter 133, School Laws of 1888, makes no provision for the division of assets and liabilities. It does however provide that independent districts organized under the provisions of this act shall be governed by the laws relating to other independent districts. Section 1715 provides that a similar division, by the respective boards of directors, shall be made in the case of the formation of independent districts. We are led to the conclusion in this case, that the division should have been made by the respective boards of the independent districts carved out of the independent district of Edna.

The decision of the county superintendent is therefore

AFFIRMED.

HENRY SABIN,

August 11, 1888. *Superintendent of Public Instruction*

MICHAEL MELENEY v. DISTRICT TOWNSHIP OF ERIN.

Appeal from Hancock County.

DISCRETIONARY ACTS. May not be reversed unless the proof is conclusive. The board must bear any blame that may attach to an unwise or inexpedient action.

The transcript in this case shows that on the 19th day of March, 1888, the directors voted to locate the new school-house in subdistrict number six, as near the center of sections 3, 4, 9 and 10, as practicable.

April 23, 1888, they voted to locate the house on the southeast corner of the southwest quarter of section 4. From this decision Michael Meleney appealed to the county superintendent, who after hearing evidence in the case reversed the action of the board and relocated the site for the new school-house near the southeast corner of the northwest quarter of section nine. From this decision William Boldt appeals.

The law vests very large discretionary powers in the board. They are chosen by the people for a specific purpose and are directly responsible to the people for the manner in which they discharge their duties. Parties feeling themselves aggrieved by the action of the directors have

the right of appeal, but they must make it plain that their grievance is something more than personal in its nature, that it consists in some violation of the law, or some abuse of discretion on the part of the directors, such as being actuated by selfish or improper motives or neglecting to exercise due discretion in guarding the interests of the entire district.

The county superintendent, it is true, may determine whatever questions the board had determined, but he is not to put himself in the place of the board, nor is he to assume, except in extreme cases, the responsibility which belongs to them. It is not expected that he will assume original jurisdiction and reverse their action upon his individual judgment. He may even think that if he had been a member of the board he would have voted differently from the majority, or that some other course than that taken by the board would have been better for the interests of the district, and yet feel compelled to affirm the action of the directors. He may not reverse their action unless it is proved beyond doubt that they violated law or in some manner abused their discretion. If there is any doubt, the board are to have the benefit of that doubt. *Kennon, Orme, et al. v. District Number Four, Nodaway Township;* also, *Boyer v. Independent District No. 2, Dutch Township.*

The township of Erin consists of five subdistricts. Three of the directors voted to locate the new house in subdistrict number two, on the site in question, and two favored a site one-half mile farther south. There was very little testimony introduced in the trial before the county superintendent. While it is evident that the site chosen by the majority of the directors is in some respects not the most desirable for a school-house site, it is uncertain whether there is any better site in that neighborhood. There is nothing to show that they have violated any law or in any way abused their discretion.

The proceedings of the county superintendent in this case have been in all respects in accordance with the requirements of the law and he was undoubtedly actuated by the best motives. We cannot however affirm his decision without violating a well known rule of law and reversing the policy which this department has followed without an exception. The decision of the county superintendent is

REVERSED.

HENRY SABIN,

September 17, 1888. *Superintendent of Public Instruction.*

J. F. Klise v. District Township of Independence.

Appeal from Jasper County.

1. Notice. When leading parties in the case sign an agreement waiving notice, neither side can afterward object to such proceedings as being irregular.
2. Independent District: *Organization of.* In establishing the boundaries of a contemplated independent district under section 1801, the board should include with the town such contiguous territory as may best subserve the convenience of the people for school purposes.

The transcript shows that on the 25th day of May, 1888, the directors of the district township of Independence, upon a petition duly signed and presented to them, refused to establish the independent district of Baxter as prayed for in said petition. The transcript further shows that at said meeting the directors established the independent district of Baxter, with boundaries as follows: "Beginning at northwest corner of the southeast quarter of the northeast quarter of section 15, running thence east one-half mile, thence south one-half mile, thence west one-half mile, thence north one-half mile to place of beginning."

From this action J. F. Klise appealed to the county superintendent, who on the 27th day of June, 1888, rendered his decision reversing the action of said board and establishing the independent district of Baxter with boundaries as follows: Beginning at the N. W. corner of the east half of the N. E. quarter of section 15, thence run due east to the N. E. corner of section 13, thence south to the S. E. corner of the N. E. quarter of section 24, thence west to the S. W. corner of the east half of the N. E. quarter of section 22, thence north to place of beginning. The board now appeal.

There are some irregularities in this case which must be noticed here. The transcript of proceedings was filed by the secretary before the affidavit was in the office of the county superintendent, and the case was thereupon dismissed. A new case was instituted and the secretary refiled his original transcript instead of preparing a new one. It does not appear that the interest of either party was prejudiced by this error. It has always been held by this department that the stringent rules of practice are not to be too closely followed in this system of appeals, and that as the leading purpose of the law is to obtain substantial justice, this object should not be defeated by technical objections. See *James C. Smith v. District Township of Maquoketa.* It should also be noticed that the transcript of record sent up by the county superintendent shows that "The transcript of the records of said board, together with copies of

papers and plats being on file in this office, the same were accepted in this case, and Mr. Klise on behalf of himself as appellant, and D. R. Mann, secretary of said school board, and J. F. Walton, a member of the committee of said board, on the part of the appellee waive any further notice, and the day is fixed for the hearing of said appeal on the 22nd day of June, 1888."

It is held that the above agreement acts as a bar to the right of either party to object to further proceedings, and that the county superintendent did not err in proceeding to try the case upon its merits.

There is but one vital point in this case. Did the county superintendent err in fixing the boundaries for the independent district of Baxter? The limits of said district as established by the township board, contained 160 acres of land, the valuation of which, as appears from the testimony sent up by the county superintendent, is estimated at about $24,000. When we consider that there are at least eighty pupils to be provided for in the contemplated district, it is evident that to provide suitable school accommodations under such limitations would require an excessive rate of taxation, beyond anything contemplated by the law.

We hold that in this respect the board did abuse the discretion reposed in them by the law, and that the county superintendent was fully warranted in reversing their action. The county superintendent had full power to do whatever the board could lawfully do. Did he abuse his discretion in establishing the boundaries of the independent district of Baxter? According to the transcript sent up to this office, certified to by the county superintendent, as the assessed valuation of real and personal property within the limits as set off by him, to constitute the independent district of Baxter, and as found in the books marked 1887–1888, considered by him in determining said case, the valuation is both real estate and personal, $58,177. The same valuation for the township is $320,887. The number of pupils within the limits of said independent district of Baxter is nearly twice as many as in any of the remaining subdistricts of the township. The division of territory seems to be as nearly equitable as any that can be devised.

It is therefore ordered that the independent district of Baxter be created to consist of such territory as was set off by the county superintendent in his decision rendered June 27, 1888, and that in accordance with section 1801 an election shall be held on the 20th day of March, 1889, at which time the electors shall vote by ballot for or against such organization.

The decision of the county superintendent is

AFFIRMED.

HENRY SABIN,

October 29, 1888. *Superintendent of Public Instruction.*

Samuel Walker v. J. S. Crawford, County Superintendent.

Appeal from Cass County.

1. Certificate: *Refusal of.* The county superintendent is his own judge as to how fully he will give the applicant reasons for the refusal of a certificate.
2. ———: ———. The county superintendent is charged with the responsibility of refusing to issue a certificate to any person unless fully satisfied that the applicant possesses the essential qualifications demanded of teachers by the law.
3. Discretionary Acts. Unless a marked violation of the large discretion vested in the county superintendent is proved clearly and conclusively, his action in refusing or revoking a certificate will not be interfered with on appeal.

This case arises from the refusal of J. S. Crawford, county superintendent of Cass county, to grant a certificate to Samuel Walker to teach in the schools of said county. The case was reheard on the 1st day of December, 1888, by way of appeal, the county superintendent approving his former decision. Samuel Walker appeals.

Section 1766 requires the county superintendent to examine each candidate desiring to teach in the public schools of his county, in certain branches enumerated therein, with special reference to his competency and ability to teach the same. But section 1767 still further directs that the county superintendent must satisfy himself that the applicant possesses a good moral character and the essential qualifications for governing and instructing children and youth. Here then, are three distinct qualifications to be investigated and determined by the county superintendent before he issues the certificate,

My predecessor very pointedly says in a written opinion on file in this office: "Under the law the county superintendent must be satisfied that you (the candidate) possess all the qualifications enumerated by the law."

In this case it is not claimed that the appellant is deficient in the branches usually taught in the public schools. Neither is it charged that he does not possess a good moral character. The only point in question is his ability to instruct and govern children and youth. We confess that this is an exceedingly difficult point to determine in many cases. The surest way undoubtedly is to visit and inspect the school, but we think the county superintendent took the next best way when he drew the candidate into a conversation and allowed him to express himself freely and without reserve. There are certain traits of character most essential to a teacher, which cannot be ascertained by a written examination alone.

At the time of the trial on appeal the county superintendent was placed on the stand as a witness for the appellant. In the course of his testimony he made this statement: "I refused Mr. Walker a certificate because I thought, and still think, Mr. Walker did not have judgment, a well balanced mind, and common sense, to teach a good school." It is not the duty of the superintendent of public instruction to try this case *de novo* in order to determine the correctness of this conclusion. We are not called upon to pass upon the fitness or unfitness of Mr. Walker to teach in the schools of Cass county.

Did the county superintendent err, in that he was actuated by wrong motives? If through passion or prejudice he refused Mr. Walker a certificate he did him an injustice, and his decision should be reversed. The existence of such a ruling motive would show itself somewhere in the evidence. We have read the transcript several times with care, and we fail to find any disagreement existing between the parties previous to, or at the time the appellant was first examined, or that Mr. Crawford has spoken unkindly of Mr. Walker or shown a disposition to injure him in any way. It was competent for the appellant to show clearly at the trial that the county superintendent was prejudiced against him to such an extent as not to do him justice, this he has failed to do by any reliable testimony. The weight of the testimony is to the effect that the county superintendent was endeavoring to do his duty as a school officer and in this the superintendent of public instruction must sustain him.

The counsel for the appellant claims that the county superintendent erred in not informing the applicant upon what grounds he refused him a certificate. The testimony of Mr. Frost, from his long experience in the office of county superintendent, has great weight. We agree with him that it is generally better to inform the applicant frankly and fully why the certificate is refused, but cases may arise in which it is as well not to do this. The law is silent upon this point, the county superintendent must be his own judge of what it is best to do. We do not think the refusal in this case is an error on the part of the county superintendent.

It is also alleged on the part of the appellant that "the county superintendent made a wrongful decision upon the facts in the case." The appellant introduced evidence to show that he had taught a fairly successful school, and that he was in good repute as a teacher in his own neighborhood. All this was pertinent to the question at issue, but if the conversation and actions of the appellant made such an impression upon the mind of the county superintendent at the time of examination that this evidence even could not overcome it, the county superintendent could not consistently do otherwise than as he did.

The discretion vested in the county superintendent by the law is very large, and for this purpose, that he may guard the public schools against the intrusion of persons unworthy or unfit for the office of teacher. The department of public instruction cannot release him from his responsibility, nor can it interfere with his discretionary acts except upon the clearest and most convincing proofs of violation of law, or of the influence of passion or prejudice in the performance of his official duty.

The appellee, on the other hand, seems to argue that the actions of the county superintendent, in refusing to grant a certificate cannot be interfered with by the superintendent of public instruction. In 1867, D. Franklin Wells, then superintendent of public instruction, obtained an opinion from the attorney general of the state, Hon. F. E. Bissell, upon this point. The following extract from that opinion is answer to each of the claims just considered. "Chapter 52, laws of the tenth general assembly, provides that the superintendent of public instruction shall be charged with the supervision of all the county superintendents, and shall determine all cases appealed from the decision of the county superintendent. I hold that under the above provisions, the right of appeal is clearly inferrable, if not directly given to any one aggrieved by the refusal of the county superintendent to give a certificate, or by the revocation of a certificate. The power should, however, be very cautiously exercised and the decision of the county superintendent should not be interfered with except in case of a clear violation of duty, or when the act was the clear result of passion or prejudice."

After a careful review of the testimony and the able arguments submitted to us, we do not find sufficient reason for reversing the decision made heretofore.

AFFIRMED.

HENRY SABIN,

February 4, 1889. *Superintendent of Public Instruction.*

PERRY HODGE v. R. B. YOUNG, COUNTY SUPERINTENDENT, ET AL.

Appeal from Dickinson County.

1. APPEAL. An appeal will lie to determine conclusively whether the provisions of section 1797 have been complied with.

2. TERRITORY: *Transfer of.* When a transfer is sought under section 1797, no appeal will lie to control the discretion of the county superintendent and the board of the district from which the territory is taken.

On the 18th day of February, 1889, R. B. Young, county superintendent of Dickinson county, issued an order that the S. E. quarter and also the N. E. quarter of Sec. 24, 99, 36, Center Grove township, should be

set off to Richland township for school purposes under section 1797. Perry Hodge appeals from this order.

It is also in evidence that the directors of the district affected gave their consent to the transfer of territory. As this is a case in which the county superintendent has original jurisdiction to act with the directors of the district affected, no appeal will lie from his action to control his discretion. It is competent, however, for the superintendent of public instruction to entertain an appeal for the purpose of ascertaining whether the provisions of section 1797 apply. If there is clear evidence that the provisions of said section do not apply, the order of the county superintendent must be set aside. There seems to be clear proof that such a natural obstacle as the law contemplates, does not exist in this case. There are in evidence the affidavits of certain parties who claim to be well acquainted with the territory transferred by said order, to the effect that the slough in question is by no means impassable to such a degree as to act as an obstacle to children attending school in Center Grove township, in the meaning contemplated by the law. It is held that there is no power under section 1797, to transfer said territory.

The order of the county superintendent, dated February 18, 1889, is therefore declared void and

REVERSED.

HENRY SABIN,

May 18, 1889. *Superintendent of Public Instruction.*

G. W. DAVIS ET AL. v. DISTRICT TOWNSHIP OF LINN.

Appeal from Linn County.

1. APPEAL. Will not lie to control the action of either board or of the county superintendent, under section 1793.
2. TUITION. To enable the district in which the children reside to collect tuition, all the requirements of section 1793 must first be fulfilled.

At their regular meeting on the 18th of March, 1889, the board passed a resolution excluding from the privileges of the school in subdistrict number seven, children from the independent district of Laurel Hill in Jones county who had from time to time for many years, been allowed to attend the school in said subdistrict number seven. On the 13th of April the board considered a petition of parties in the adjoining district of Laurel Hill desiring to send to the school in Linn township, and passed an order refusing to admit their scholars. From this action, G. W. Davis and others appealed to the county superintendent who heard the case on the 9th of May, affirming the order of the board. From his decision G. W. Davis appeals.

The attendance of scholars living in an adjoining district is governed by section 1793, School Laws of 1888. By the portion of the section to which this appeal relates, children may attend in another district on such terms as may be agreed upon by the respective boards. In the history of this case it is not shown that any action was taken by the board of Laurel Hill as to agreement regarding terms of attendance. The board of the district township of Linn refused to admit the scholars in question. It is from this order, an initial action, that appeal was taken.

At the trial before the county superintendent a statement of facts was submitted and was agreed to by both parties to the appeal, as a basis upon which the appeal should be heard. At this point the board by their attorney filed a demurrer, urging that the county superintendent could not acquire jurisdiction; that the action of the board complained of was not subject to revision upon appeal; and asking the county superintendent to dismiss the case for want of jurisdiction. The demurrer was overruled, the case was tried on the agreed statement of facts, and the order of the board affirmed. Did the county superintendent err in overruling the motion to dismiss the case for want of jurisdiction? We think he did.

If the boards fail to agree upon terms of attendance, certain conditions regarding distance from the respective schools being fulfilled, as they are in this case, section 1793 itself provides the next step to be taken. The county superintendent of the county in which the children reside may give his consent with that of the board of the district where the children desire to attend, admitting them. But from the refusal of the board to admit the children it is held and has been uniformly held in opinions by this department, that appeal will not lie. It has always been conceded to be the intention of the lawmakers to leave with the board of the district in which the school is maintained, the matter of determining finally and conclusively, if they choose, that scholars shall not be admitted under the provisions of section 1793. If their consent is withheld, neither the courts of law nor any appellate tribunal may set aside their order of refusal, and compel them to admit outsiders and accept as compensation for their instruction the amounts fixed by section 1793. *District No. 2, Harlan Township v. District No. 1, Harlan Township*, last paragraph but one. We have referred to this matter at such length, because the counsel for the appellant urges the claim that the case should be remanded for a new trial.

We are compelled to find that there are but two methods in law, by which attendance in subdistrict number seven may be secured for their children by the appellants. The two boards may agree as to the terms of attendance. Or after they have refused to agree the concurrent consent of the county superintendent of Jones county and the board of the

district township of Linn, will entitle the children to attendance and bind their home district for the expenses of their instruction in the manner provided by section 1793. But appeal will not lie to control the action of either board, or of the county superintendent.

REVERSED AND DISMISSED.

HENRY SABIN,

August 6, 1889. *Superintendent of Public Instruction.*

J. S. FOLSOM *et al.* v. DISTRICT TOWNSHIP OF CENTER.

Appeal from Cedar County.

MODIFICATION OF DECISION.

APPEAL. A decision may be modified upon proof that a change in its terms is desirable.

The decision given in the above entitled appeal, dated June 7, 1888, is hereby modified as follows.

We are assured that the provisions of the decision have been complied with, the site having been located and the school-house built thereon in strict conformity with the terms of the decision. It is now desired by all parties to change the form of the site, slightly. Our decision referred to above is therefore modified so that the site may extend about eighteen rods south of the limitation made by the former decision, and shall be about twenty-two rods long, six rods wide at the south end, and nine rods wide at the north end.

HENRY SABIN,

December 30, 1889. *Superintendent of Public Instruction.*

ISHAM WATKINS v. INDEPENDENT DISTRICT OF EMPIRE.

Appeal from Marion County.

1. APPEAL. An appeal will not lie from an order of a board initiating a change in boundaries, where the concurrence of the board of an adjoining district is necessary to effect the change.
2. JURISDICTION. The jurisdiction of an appellate tribunal is not greater than that of the board from whose action the appeal is taken.

On the 16th of September, 1889, the board of the independent district of Highland determined to notify Isham Watkins of Empire district, that his children could not any longer attend the school in Highland district. The records show that they were willing that he should be attached to Highland district. This was taken as an initiatory movement. Isham

Watkins petitioned the board of the Empire district to set off the north half of northeast quarter of section 25, 75, 21, to the independent district of Highland. The petition was rejected, in effect the Empire board refused to concur. An appeal was taken to the county superintendent, who ordered that the northeast quarter of northeast quarter of section 25, be detached from the independent district of Empire and attached to the independent district of Highland.

Of the several questions involved in this case it is only necessary to discuss one. Did the county superintendent exceed his jurisdiction? The board of Highland initiated an action. The directors of Empire district must either concur or nonconcur, and from their action an appeal could be taken. If they did not choose to accede to the proposition of the Highland district, then action in that particular ended with their vote to nonconcur. If they had a different proposition to make, as for instance granting forty acres, they could only initiate a movement to that effect, and leave it for Highland district to act, and from the action of the latter board an appeal could then be taken.

In this case the county superintendent initiates a new action, and leaves it for Highland district to act. Now if his action is allowed to stand, any one aggrieved may take an appeal from the action of the board of the Highland district. He would then have an appeal brought before the county superintendent from an action which he himself initiated. It might be further argued that if the county superintendent has original jurisdiction, then this appeal cannot lie, as an appeal can be taken only from the action of the board completing the action. The precedents established have been followed closely by this department and we can see no reason for breaking away from them.

It is held that in cases requiring the concurrent action of two boards, the board completing the action can only concur or nonconcur. Any action involving a new proposition initiates a new case, which must be passed upon by the other board concerned in the matter and from which an appeal can be taken. It is further held that the county superintendent upon appeal is limited to reversing or affirming the action of the board completing the action, and that he cannot assume original jurisdiction and do what the board appealed from could not do.

It seems apparent that Mr. Watkins has not reasonably good school facilities and we regret that we are compelled to set aside the decision of the county superintendent. He was actuated by laudable motives and was looking for the best interests of the children in this case. We are, however, forced to the conclusion that the county superintendent erred in assuming original jurisdiction.

REVERSED AND DISMISSED.

HENRY SABIN,

March 18, 1890. *Superintendent of Public Instruction.*

Robert Maxwell v. District Township of Lincoln.

Appeal from Union County.

1. Proceedings. The regularity of all the proceedings will be presumed upon. This is true in an especial sense when the records are more than usually full and complete.

2. Teacher: *Trial of.* In the trial of a teacher the board are bound carefully to protect the interests of the district and to seek the welfare of the school, as well as to regard the rights guaranteed to the teacher.

On the 9th day of December, 1889, the secretary acting upon a petition signed by five residents, called a meeting of the board for December 14, to examine the teacher of subdistrict number eight. A notice was also served upon the teacher the same date, signed by secretary, both the call and the notice being spread upon the records in due form. The meeting was held on the 14th of December. The records show that the appellant was present and objected to the consideration of the charges, as the proceedings were not in accordance with section 1734. At the same time he demanded a copy of the charges and that one week be given him in which to prepare his defense, which demand was complied with and the board adjourned to December 21.

If the appellant had moved to dismiss the case, it would not have been an error to sustain the motion, but he submitted to the jurisdiction of the board and obtained a continuance of the case until December 21. It must be held that by this action he waived any defect or irregularity in the jurisdiction of the board in this case. The purpose and object of the process, as pointed out in section 1734, was fully accomplished. See *Wilgus et al. v. Gettings et al.*, 19 Iowa, page 82. At the meeting held December 21, the board voted to discharge the teacher. An appeal was taken to the county superintendent who affirmed the board. The appellant appeals to the superintendent of public instruction.

The only question before the county superintendent was whether the conditions as prescribed in section 1734 were fully complied with. It is alleged that while the teacher was present, he was not allowed to make his defense. The secretary's transcript furnishes the only means of determining this. The records show that he was allowed to cross-examine witnesses, and they do not show that he was barred from offering evidence had he chosen to do so. There can be no question of the power of the board under the law to discharge the teacher. It is held in case of *Kirkpatrick v. Independent District of Liberty*, 53 Iowa, 585, that the board does not act as a court, in any strict sense, and is not bound

by the rules applicable to a court. The intent of the statute is evidently, while it guards carefully the rights of the teacher, to enable the board to discharge a teacher who, after a careful investigation, is determined to be unfit for the position. It is termed "a simple and inexpensive way of determining rights." It is claimed by the counsel for the appellant that when a certain mode is prescribed in determining a case not in the usual course of the common law, such mode must be followed, and reference is made to the case of *Cooper v. Sunderland*, 3 Iowa, 125. But it is held in the same case that when sufficient appears on the face of the records to give it jurisdiction under the law conferring the power, then the presumption attaches in favor of the remainder of the proceedings of the court. If the action of the appellant in appearing for trial gave the board jurisdiction, then all the proceedings must be held to be regular. The discharge of a teacher is largely within the discretionary power of the board. They are to guard the rights of the district and the interests of the school, as well as the rights of the teacher. After a full and fair investigation it is their duty to act as they deem it best, under all the conditions and circumstances of the case. See *Smith v. District Township of Knox*, 42 Iowa, 522. This being the case it is the duty of the county superintendent not to interfere with the action of the board unless he is convinced that they in some way abused their discretion. He is right in sustaining the board even though as an individual he would have preferred some other action on their part.

Our conclusion is, after a careful consideration of the matter and after reading the transcript with unusual care, that the defendant had a fair and impartial trial, and that the terms of the law were substantially complied with. The decision of the county superintendent is

AFFIRMED.

HENRY SABIN,

June 12, 1890. *Superintendent of Public Instruction.*

KELLEY AND SMITH v. DISTRICT TOWNSHIP OF EDEN.

Appeal from Decatur County.

BOARD OF DIRECTORS. After such a decision as prevents any action of the board until some material change occurs, in order that the board may act anew changes of such a character as to obviate to a large extent the objections that previously existed, must have taken place.

The main points in this case are simply these: On the 8th day ofFebruary, 1890, the board voted to abolish subdistrict number eight. Appeal was taken to the county superintendent, who reversed the action of the

board. An appeal was then taken to the superintendent of public instruction.

This department has held that when a case involving a change of subdistrict boundaries has been adjudicated by the county superintendent, reversing the action of the board, and has been affirmed when brought before the superintendent of public instruction, upon appeal, it cannot again be brought upon appeal, unless it can be shown that some material change affecting the conditions of the case has taken place since the date of the former decision. It is proper to say that this holding is based upon opinions uniformly given by the former superintendents of public instruction, and on file in this office.

As this case was substantially before this department in March, 1888, it is first in order to determine whether any material change has taken place affecting the conditions of the case, since that date. By a material change we mean such a change as would obviate to a large extent the objections raised against the action of the board at that time.

The erection of the bridge over Little River does not, according to the testimony, lessen the difficulty of attending school on the part of certain scholars, as the bottom land is impassable during high water. There has been no decrease in the number of pupils which renders it expedient to abolish subdistrict number eight. The taxes in Eden township for school purposes are not in excess of what they were in 1888.

We are unable to find after carefully reading the testimony in this case, that there has been any material change affecting this case since our decision rendered March 16, 1888. This conclusion renders it unnecessary to examine other points raised by counsel.

AFFIRMED AND DISMISSED.

HENRY SABIN,

June 23, 1890. *Superintendent of Public Instruction.*

MICHAEL DONELON v. DISTRICT TOWNSHIP OF KNIEST.

Appeal from Carroll County.

SUBDISTRICT BOUNDARIES. The boundaries of subdistricts may be changed or new subdistricts formed, only at the regular meeting of the board in September or at a special meeting held before the following March.

On the 24th of March, 1890, the board made an order changing the boundary between subdistricts four and five. Michael Donelon residing upon the territory transferred appealed to the county superintendent, who on the 14th of April affirmed the order of the board, and from his decision Mr. Donelon appeals.

The action of the board called in question was taken under section 1796, the first of which section reads: "The board of directors shall, at their regular meeting in September, or at any special meeting called thereafter for that purpose, divide their township into subdistricts, etc." It has been continuously held by this department ever since the enactment of the provision of law quoted above, that as changes in the subdistrict boundaries under section 1796 do not take effect until the following subdistrict election, it is therefore the manifest intention of the law as indicated in the reading of the portion of section 1796 we have quoted, that said changes should be ordered at the regular meeting of the board in September, or at a specially called meeting held long enough before the subdistrict election to allow time for notices to be given for the election of subdirectors, and that the law does not give the board power to change subdistrict boundaries between March and September, but only between September and March. If this is the meaning of the law it is decisive of this case, and we shall be compelled to dismiss the case for want of jurisdiction.

A careful examination of the question leads us to the same conclusions uniformly announced by our predecessors. We are able in no other way to explain the wording of the section. It seems plain that the law intends to impose the limitation upon the board so clearly indicated by the phraseology of section 1796.

Attention is invited to the decisions found on pages 25, 26, and 63, School Law Decisions of 1876. It is also worthy of notice that this principle has been considered to be so fully established in practice and so well understood, that cases referring to the universally admitted fact have been omitted from the three compilations of decisions made since 1876. This case is the first appeal for many years past reviving the question.

We are aware that the case in 70 Iowa, 338, may be urged as affording opportunity for a different view than the one taken by us. But it must be observed that the matter at issue in that case is whether the board have power to exercise their discretion in so full and complete a manner as to dispense entirely with a new subdistrict recently created by a former board, and thus by a single order opposite in intention to nullify all that had been done previously in regard to change of boundaries. It was urged that the board do not have such power after the subdistrict has acquired a legal existence. The effect of the decision is to establish the power of the board to exercise their fullest discretion in determining the necessity for change of boundaries, subject to the remedy of appeal. We cannot interpret the decision as setting aside that provision of 1796 which directs that such changes in boundaries shall be made at the regular meeting of the board in September, or at a

special meeting thereafter, obviously not to be held later than the first Monday in March.

It is apparent then that the action of the board complained of in this case was not in accordance with law, and hence was null and void. It is fortunate that the board have an opportunity within a few weeks to take such action as may then seem to them for the best interests of their district and and all concerned.

REVERSED AND DISMISSED.

HENRY SABIN,

August 23, 1890. *Superintendent of Public Instruction.*

E. J. HOSKINS ET AL. v. DISTRICT TOWNSHIP OF LINCOLN.

Appeal from Shelby County.

1. DISCRETIONARY ACTS. The appellate tribunal is to decide only whether the action complained of in the affidavit of appeal is proved to be of such a nature as to compel a reversal of such action.

2. APPEAL. It is not intended that the superintendent of public instruction shall hear an appeal case *de novo*. He is confined to the record of the case as heard before the county superintendent.

3. ———. It is not the purpose of an appeal to secure a decision as to which of two sites is preferable, or as to whether a better site might not have been found. If the site chosen is proved to be unsuitable, or an abuse of discretionary power is clearly shown, then the order of the board may be set aside, but not otherwise.

On May 19, 1890, the directors passed an order locating the school-house site in subdistrict number seven, in the N. W. corner of section 36. From this order E. J. Hoskins appealed to the county superintendent, who affirmed the action of the board. Appeal was then taken to the superintendent of public instruction.

Exclusive power to locate school-house sites is vested in the board. Such power is nowhere given to the county superintendent. The only limitations imposed upon the board are that they shall observe the geographical position and the convenience of the people. If any one is aggrieved by the action of the board he may appeal to the county superintendent, who has the power after a hearing of the case to reverse their action provided he is satisfied beyond a reasonable doubt that they have violated law, or abused their discretion in some way, as by choosing a site too far from the geographical center or one which is not suited to the convenience of the people.

It is not claimed in the present case that the board violated law in any way. The difference between the two sites in question is only eighty

rods and there is no preponderance of evidence to show that one is much more suited to the convenience of the people than the other. It is not the intention of the law that the county superintendent should place his private judgment over against the judgment of the board. His duty is to determine whether the grievance complained of in the affidavit is proved to be of such a nature as to warrant him in interfering with the action of the board. His own opinion that some other course of action would have been better should not be allowed to bias his decision. The counsel for appellants urged at the trial before the superintendent of public instruction, that they could not get a trial of facts before the county superintendent; they desired him to ascertain which of the two sites is more preferable as a site for a building and to base his decision upon that alone. The affidavit upon which the case was tried before the county superintendent alleges in substance that the site chosen by the board is for various reasons unsuitable for school purposes. The issue was joined upon this fact, and the county superintendent in his decision finds that while the site contended for by the appellants is in some respects the better of the two, the one selected by the board is not unsuitable for school purposes and constitutes what he considers a fair average site. Under such conditions he very properly affirmed the action of the board.

The counsel for appellant places great stress upon the decision of the supreme court in the case of *Atkinson et al. v. Hutchinson et al.*, 68 Iowa, 161, to prove that the superintendent of public instruction is not of necessity confined to the exact record made before the county superintendent, but that his decision should be based upon all essential, existing facts. It is supposed that such facts are brought out upon the trial before the county superintendent and appear in the transcript of evidence sent up with the case. If between the time of trial before the county superintendent and the trial before the superintendent of public instruction some essential evidence comes to light which could not from its nature have been known at the time of the trial before the county superintendent, it would perhaps be proper for the superintendent of public instruction to take it into consideration before rendering his decision. In the case cited, at that time before the supreme court, it was contended that certain unusual changes took place prior to the hearing before the superintendent of public instruction, which affected very materially the condition of affairs. The court in rendering its decision took it for granted that these changes were known to the superintendent of public instruction at the time he decided the case. If the supreme court had intended to convey the idea that it is the province of the superintendent of public instruction to hear the case *de novo* in the usual acceptation of that term, they would hardly have said that the legislature designed to provide an inexpensive and

summary way of disposing of these questions when it afforded aggrieved parties the right of appeal. Indeed if the superintendent of public instruction had the power to discard the trial before the county superintendent, and to send for witnesses and papers from remote sections of the state, as would be necessary in hearing these cases *de novo*, this would prove the most expensive and tedious way of disposing of these questions which it would be possible to devise.

The decision of the county superintendent is

AFFIRMED.

HENRY SABIN,

October 9, 1890. *Superintendent of Public Instruction.*

HEFFERN AND VAN PATTER v. DISTRICT TOWNSHIP OF TIPTON.

Appeal from Hardin County.

1. SCHOOL-HOUSE TAXES. The board may not refuse to expend school-house funds for the purposes for which they were voted.
2. MANDAMUS. To compel the performance of an official duty not involving the exercise of discretion, a writ of mandamus is a speedy remedy.

The affidavit in this case recites in effect that at their meeting in March, 1889, the electors of subdistrict number one voted a tax of two hundred dollars on themselves to purchase a site near the center of the subdistrict, remove the school-house, and procure a highway to the same. At their meeting March 17, 1890, the board voted to lay on the table a petition asking for immediate action. The county superintendent affirmed the action of the board. Heffern and Van Patter appeal.

There is no doubt as to the facts in this case. The tax of two hundred dollars was voted, was levied by the supervisors, and part of it has been collected and is now in the hands of the district treasurer. In such a case there is no provision of law by which the board may be excused from expending the money for the purposes for which it was levied. This duty is not discretionary but mandatory. The board, however, are entitled to a reasonable length of time, and may use their discretion as to the best and most economical way of expending the money provided they regard strictly the purpose for which it was raised. It does not appear that the board in laying the petition upon the table were actuated by any desire to delay action unreasonably or to defeat the wishes of the electors. The board have also large discretionary powers when determining the location of a highway.

We are disposed after a careful consideration of this case to remand it to the county superintendent, to be by her remanded to the board

with instructions that they proceed at the earliest date possible to carry out in good faith the wishes of the electors of subdistrict number one. If they fail to do this the most speedy remedy for any one aggrieved is an application to the court for a writ compelling the directors to act.

AFFIRMED AND REMANDED.

HENRY SABIN,

March 24. 1891. *Superintendent of Public Instruction.*

WATKINS, RICHIE, *et al.* v. INDEPENDENT DISTRICT OF EMPIRE.

Appeal from Marion County.

APPEAL. The action of two boards upon a subject over which they have divided control constitutes a concurrent action, and appeal may be taken only from the order of the board taking action last.

The affidavit upon which this appeal is brought to this department recites in effect that the appellants are aggrieved by the decision of the county superintendent, reversing the action of the board of the independent district of Empire and attaching certain territory described as the northeast quarter of the southeast quarter of section 25 to the independent district of Highland for school purposes.

The transcript shows that upon the petition of Isham Watkins, the directors of the independent district of Highland acceded to the transfer of said forty acres, but that the directors of the independent district of Empire refused to concur. It is granted that in this case the county superintendent has only appellate jurisdiction, and that said officer can only affirm or reverse a concurrent action.

The only remaining point in the argument of counsel for the independent district of Empire is, that as there was no agreement of the two boards there was no action and consequently the county superintendent had no jurisdiction. It is held that a concurrent action is one in which the action of two boards is necessary in order to determine the question at issue. In this case the question to be determined was the transfer of certain territorry from the independent district of Empire to the independent district of Highland. The independent district of Highland voted to annex the territory to their district. The independent district of Empire refused to concur and the action as far as the two districts were concerned was completed.

It was plainly such an action as is contemplated under section 1829 in defining the right of appeal. See *Dayton v. District Township of Cedar*,

page 58, School Law Decisions of 1888, also *Walton v. Independent District of Osage*, page 158, School Law Decisions of 1876. It cannot be held in the case at bar, that the county superintendent did what neither board had power to do, in ordering the territory in question to be transferred. She simply on appeal corrected what she deemed to be an error of discretion on the part of the board completing the action, and in this she did not exceed her jurisdiction. The decisions of this department have invariably upheld this view of such cases.

We think the board of Empire district in refusing to concur committed an error sufficient to justify the county superintendent in reversing them. The decision of the county superintendent is

AFFIRMED.

HENRY SABIN,

March 27, 1891. *Superintendent of Public Instruction.*

ELISHA AND ELDA TANNER v. INDEPENDENT DISTRICT OF CLARENCE.

Appeal from Cedar County.

1. AFFIDAVIT. A technical error in the affidavit not prejudicial to either party will not defeat the appeal.
2. SCHOOL PRIVILEGES. The law is to be construed in the interest of the child. The actual residence of the scholar at the time will establish the right to attend school free of tuition.

The directors of the independent district of Clarence excluded Elda Tanner from school until such time as her tuition is paid, on the ground that she is a non-resident pupil. The county superintendent on appeal reversed the action of the board and appeal was taken to the superintendent of public instruction. It was claimed before the county superintendent that inasmuch as the affidavit upon which the appeal was based was without the seal of the notary public, that there were no grounds upon which the appeal could be legally based. While it is true that the notarial seal is necessary to constitute an affidavit, in this case the notary public was present at the time of trial and under oath testified that the omission of the seal was only an oversight on his part, and that the persons therein designated did make oath to the paper and affix their signatures to it in his presence, then he also there affixed the notarial seal. It is held that since no interests were prejudiced by the error which at the best was only technical, that the county superintendent did not commit an error in overruling the motion to dismiss the case.

The allegation of facts made by Elda Tanner are that she is sixteen years of age, that her father and mother have parted, and that for ten

years or more she made her home in the family of Mrs. McCartney in Massilon township. Before she came to Clarence she had an understanding with her father that she was to care for herself thereafter. She also claims that being thus emancipated from her father's control, she chose to become a resident of Clarence, and as an actual resident of that school district is entitled to the privileges of school under the provisions of section 1794.

It is of interest to ascertain how far such an agreement constitutes emancipation of a minor child. It is held in 1 Iowa, 356, that in the absence of statutory requirements such emancipation need not be evidenced by any formal or record act, but may be proved like any other fact. The evidence of Elda Tanner in this case is corroborated by that of her father, and of Mrs. McCartney who was present during the conversation. We are disposed to hold that Elda Tanner under the facts as sworn to before the county superintendent was at liberty to choose such a place of residence as seemed to her most fitting. What constitutes an actual residence for school purposes? The provisions of the statute say that it is to be considered without regard to time of acquiring such residence, whether before or after enumeration, and regardless of the residence of the parents. The evident and beneficent intent of the law is that no child shall be deprived of school privileges. The father of a family may move into the district from an adjoining state, and although certain time must elapse before he is entitled to vote he may place his children in school the very day he arrives. In the same spirit it has been held that children living in families in which their work compensates for their board, are actual residents and are entitled to school privileges. The law is to be construed in their interests. The district is entitled to have such children enumerated, if they are thus actual residents at the time the school census is taken. We do not undertake to decide that parents or guardians can transfer children from one district to another for school purposes alone, but only that those who are actual residents under the provisions of the law may attend school without the payment of tuition. While it is true in general that the residence of a child is the same as that of the parents or guardian, the law evidently contemplates exceptions to this general rule and leaves the right to attend school to be established by the actual residence of the child. Any other construction would not be in accordance with the spirit of the law, and would deprive many children of the right to attend the public schools.

In this case the question of residence is largely one of intent. The testimony of Elda Tanner is to the effect that she was at the time of attendance an actual resident of Clarence, and had no other place of resi-

dence. It was competent for the board to disprove this, but we cannot find that the testimony to that effect is conclusive.

It is held that the board erred in excluding Elda Tanner from school and the decision of the county superintendent is

AFFIRMED.

HENRY SABIN,

April 24, 1891. *Superintendent of Public Instruction.*

J. C. REED *et al.*, v. DISTRICT TOWNSHIP OF EAGLE.

Appeal from Sioux County.

1. SUBDISTRICTS: *Form of.* The board should be encouraged in forecasting a general plan looking toward an ultimate regularity in the form of subdistricts.
2. SCHOOL-HOUSE: *Power to build.* There is no limitation in law as to the number of scholars to be accommodated, in order that the board may provide a school-house.

The above named district township coincides with a congressional township and consists of a single subdistrict. Portions of the district are yet sparsely settled. The board seem to have projected a plan to so locate school-houses when they must be supplied, that ultimately the township shall have nine subdistricts each of four sections.

On the 16th of March the board ordered a school-house built at the center of the square of four sections in the southeastern corner of the township. From this action J. C. Reed appealed to the county superintendent who affirmed the order of the board. From this decision Mr. Reed appeals.

It was urged before the county superintendent that the board were prevented by the law from building a school-house for the accommodation of a less number than fifteen of school age. The question now to be determined is whether the county superintendent erred in affirming the order of the board.

The board seemed to have outlined a policy of regarding each four sections as a separate division, to be provided with school advantages by itself. So far as forecasting the probable form of subdistricts to be created in the future, we think the board might be guided in the location of school-houses at the present time by such policy in order that ultimately each subdistrict will have the form desired and each school-house will be located so as best to accommodate all patrons.

But while matters are in this progressive condition, we think the law does not confer power upon the board to apply the limitations of section 1725, and decide that until fifteen of school age are to be accommodated

by the school-house to be built no house may be erected. In this case for instance there is but one single subdistrict. The board may create other subdistricts provided fifteen of school age are included within the boundaries of each one so formed. But the board are not prevented from building more than one school-house in any subdistrict. See 69 Iowa, 533. In the absence of specific instructions in connection with the voting of the taxes by the electors, the board are empowered to locate sites when in their judgment a school-house seems to be most demanded.

We are unable to find from the evidence any reason to disturb the finding of the county superintendent and his decision is therefore

AFFIRMED.

HENRY SABIN,

July 3, 1891. *Superintendent of Public Instruction.*

J. H. BURDICK *et al.* v. DISTRICT TOWNSHIP OF BRITT.

Appeal from Hancock County.

INDEPENDENT DISTRICT: *Organization of.* In fixing boundaries the general welfare must be regarded. Besides the town itself, only such territory should be embraced as will add to the usefulness of the new district, and not deprive any large number of adequate school privileges.

The incorporated town of Britt includes the entire civil township, excepting sections 1, 2, 3, 10, 11, 12, 13, 14, 15, the E. half of 4 and 9, and the N. half of 22, 23 and 24. In March, 1891, a petition was presented to the board asking for the formation of an independent district. The petition was granted and the board proceeded under section 1801 to perfect the organization. It is evident from the transcript of the secretary that the board took unusual care to comply with the requirements of the law in every particular. They also fixed the boundaries of the proposed independent district of Britt to include the entire township of Britt, and the north half of the north tier of sections in the adjoining township of Erin. Appeal was taken to the county superintendent as provided for in section 1829, and that officer reversed the action of the board. Appeal was then taken to the superintendent of public instruction.

Section 1806 provides that independent districts shall be governed by the laws enacted for the regulation of district townships, as far as the same may be applicable. It must be held under any fair construction of language that it is not the intention of the law to deprive the inhabitants of independent districts of the right of appeal. It must also be held in accordance with the usual practice that the appellants had a right

to amend their appeal as they did. The county superintendent did not err in refusing to dismiss the case for these reasons.

The independent district of Britt if formed must include all the territory within the limits of the incorporated town. See section 1, of chapter 118, laws of 1882. The board could not fix upon less territory, and they might include more. See section 1801.

The only question then is, did the board err in including so much territory contiguous as to make the new district unwieldy, and thus to lessen in some degree the school privileges of a number of pupils, and to practically deprive the people of certain portions of the territory of the right to manage their own school affairs.

It is plain from an inspection of the plat submitted in evidence that the territory taken from Erin township will be better accommodated with school privileges if connected with the independent district of Britt as a part thereof.

It does seem however that the portion of the township of Britt lying outside of the incorporated town of Britt, should for the present be left as a district township as provided in section 1809. Under the same section the boundary lines between these two districts can be changed at any time by the concurrent action of the two boards, so as to include any or all of this territory in the independent district. It is therefore ordered that the independent district of Britt be constituted to contain the incorporated town of Britt, together with the N. half of sections 1, 2, 3, 4, 5, and 6, of Erin township.

MODIFIED AND AFFIRMED.
HENRY SABIN,
August 7, 1891. *Superintendent of Public Instruction.*

J. H. BURDICK *et al.* v. DISTRICT TOWNSHIP OF BRITT.

Appeal from Hancock County.

ON MOTION FOR A REHEARING.

REHEARING. A new trial should be refused unless cogent reasons are produced, causing doubts to arise as to whether the merits of the case were fully and fairly set forth at the former hearing. The reasons urged must present a strong probability that a modification of the previous decision might be found to be desirable.

It is urged by the attorney for the appellant that in the carrying out of our decision made August 7, by which the finding of the county superintendent was so modified as to fix other boundaries for the contemplated independent district of Britt than those ordered by the board, cer-

tain difficulties will be met. It is also claimed that a decision may be made that will avoid any legal obstacle to the same conclusion sought by the decision already given. The form of such new decision is suggested in the application for rehearing.

With due respect to the counsel we must state that the implication that we were not fully apprised of the bearing of the entire law and of the many impediments to be encountered in the creation of independent districts is not founded in fact. All the points raised by counsel, and many others, have been fully within the knowledge of this tribunal and we have endeavored to expedite matters to the fullest degree within our power. If the ends of justice are not met the fault lies with those giving cause for the appeal.

If the independent district of Britt could organize as suggested, the new civil township could be created only under great difficulty. See section 1799. In no case could this be done before the next general election, and the new district township could not be formed until next March. See sections 1810 and 1715. In the meantime taxes would be levied and school facilities provided by the independent district of Britt. When the territory set off was duly organized as a new district a division of assets and liabilities would have to be made.

It is plain that if our decision were modified as asked, the result would be to involve the territory in controversy unnecessarily, to add to the county records, to bring upon those living outside the incorporation uncalled for worry and delay, and all to their disadvantage. We cannot find warrant for imposing such burdens upon them.

For the reasons named we are compelled to refuse to grant a rehearing.

HENRY SABIN,

August 15, 1891. *Superintendent of Public Instruction.*

E. A. Sheafe v. Independent District of Center, Center Township.

Appeal from Wapello County.

1. Teacher. As an employe of the district the teacher may justly claim and expect to receive, the official assistance and advice of the board.

2. ———. Section 1734 insures the teacher a fair and impartial trial, before he may be discharged.

The history of this case presents nothing unusual. The directors voted to discharge the teacher upon certain preferred charges. The teacher appealed to the county superintendent who reversed the action of the board. The directors now appeal.

Section 1757 sets forth plainly the nature of the contract which is the evidence of agreement between the directors acting for the district as one

party, and the teacher as the other party. Section 1734 prescribes the only method by which the directors may terminate the contract in advance or discharge the teacher. Both parties are equally bound by this contract, and as the board is a continuous body the election of an entire new board does not change the relations of the contracting parties. But inasmuch as the directors also act as judges whose duty it is to decide whether the contract shall be terminated, being themselves parties to the contract it becomes them to weigh the evidence in the case with the greatest care and to give the teacher the benefit of any reasonable doubt. In the present case the forms of the law were complied with, and the teacher was permitted to be present and make his defense.

The transcript sent up by the county superintendent shows that one of the complaints upon which the teacher was tried, was signed by Jacob Ream, who also is one of the directors and acted as one of the judges in the case. This is strong presumptive evidence of prejudice on the part of one of the judges at least, and this evidence is strengthened by the fact that Jacob Ream is the father of John Ream whose punishment is made a matter of complaint. It is further strengthened by the fact brought out in the evidence, that the present board were elected for the purpose and with the intent of displacing the teacher. The law is very careful to guard the rights of the teacher and to insure him a fair trial. That certainly can not be considered a fair trial in the eyes of the law, in which one of the judges who is to give his vote for acquittal or conviction is a complainant in the case and is as ready to pronounce the verdict before he hears the testimony as afterward.

The board invited the teacher to resign at their first meeting, and upon his refusal they proceeded at once to take steps to discharge him. Under certain circumstances this might be right, when necessary to relieve the school from a teacher proved to be incompetent or immoral. But general dissatisfaction as alleged in the petition or the desire to hire a lady teacher for the summer term, or to lessen the expenses of the district, can not be held to form any reason for discharging the teacher. The alleged punishment of the two boys is not proved in either case to have been unreasonably severe, to have been inflicted in a passion, or to have resulted in any permanent injury. These punishments happened some weeks before and if worthy of notice complaint should have been made to the old board.

It does not appear necessary to enter any further into the merits of this case. It is held that no error was committed in reversing the action of the board and the decision of the county superintendent is therefore

AFFIRMED.

HENRY SABIN,

October 20, 1891. *Superintendent of Public Instruction.*

L. Goff v. Independent District of Dallas.

Appeal from Marion County.

1. Board of Directors. The board must endeavor to determine the actual intention of the electors, and to carry out their expressed wishes.
2. Remanding of Cases. Unless the transcript indicates clearly the manner in which the board understand the expression of the electors, an appellate tribunal on the trial will be compelled to remand the case to the board for a more definite action.
3. Mandamus. The surest method to secure the performance of a mandatory duty is application to a court for a writ of mandamus.

At a meeting held August 12–13, 1891, the board voted in effect to sell the site at present occupied for school-house purposes in or adjoining the village of Dallas, and to build two school buildings one to be located at a site about one mile east of said village of Dallas, and another about twenty rods west of S. E. corner of section 2. Appeal was taken to the county superintendent, who affirmed the action of the board in locating the site in the west part of the district, but reversed their action in regard to the location east of the village of Dallas. Appeal was then taken to the superintendent of public instruction.

It is difficult to determine from the transcript sent up with this case, what were the intentions of the electors regarding the matter of a new school-house, as expressed at the district meeting, March 9, 1891. The secretary's records show that the motion to erect a school-house at each end of the district was voted down, as was also a motion to repair the old school-house or to sell that and build a new one with two rooms.

The vote to raise a tax for the purpose of building a school-house was declared carried, but the records do not show the amount to be raised by said tax, nor is there anything to show what amount if any was certified up to the board of supervisors. On the 20th of April the board voted that $1,500 was necessary for the erection of two school-houses, and on the 2nd of May the electors voted bonds to that amount for school-house purposes. There is nothing to show what form of ballots was used, or what was the intention of the electors in voting the bonds. When the intention of the electors in voting money for school-house purposes is clearly known, it is the duty of the directors to proceed in accordance therewith.

We therefore deem it best to remand the case to the county superintendent, with instructions to remand it to the board in order that they may ascertain what was the intention of the electors and that they attempt

in good faith to carry it out. If they fail to do this, the surest remedy is an application to the court for a writ compelling them to carry out the intention of the electors.

REMANDED.

HENRY SABIN,

December 23, 1891. *Superintendent of Public Instruction.*

C. A. WEBSTER v. INDEPENDENT DISTRICT NUMBER SEVEN, BURR OAK TOWNSHIP.

Appeal from Winneshiek County.

1. DISCRETIONARY ACTS. To warrant interference with a discretionary act, abuse of discretion must be proved beyond a reasonable doubt.

2. ————. It is not the province of an appeal to discover and correct a slight mistake. The board alone must bear any blame that may attach to a choice deemed by appellants somewhat undesirable, but not an unwise selection to such a degree as to indicate an abuse of the discretion ordinarily exercised.

On the 3d day of October, 1891, the board relocated the school-house site. Appeal was taken to the county superintendent, who reversed the action of the board which ordered the house removed to the new location. From this decision John Knox president of the board appeals.

The proceedings in this case are entirely regular. It is not claimed that there was any direct violation of law, nor that prejudice or improper motives in the least influenced the action of the board. The very common complaint that the discretion vested in the board by the law had been abused was virtually the only error urged.

The only question for us to determine is the single one as to whether the county superintendent was warranted in setting aside the order of the board. Unless the evidence clearly sustains his conclusions we shall be compelled to reverse his decision. But if the evidence shows plainly a gross abuse of discretion on the part of the board, then we must affirm.

Where an abuse of the large discretion vested in the board is urged, to warrant interference by an appellate tribunal such abuse must be proved conclusively. The testimony must disclose so fully the nature of the unwarranted action as to leave no reasonable doubt. The acts of a board must be presumed to be correct, and they are entitled to the benefit of every doubt. Unless it is fully apparent that the discretionary power of the board has been abused to such an extent as to render interference necessary, it is the duty of the county superintendent to allow the act of

the board to stand, although he may differ from the board very strongly as to the desirability of the order in question. In this connection, attention is called to appeal decisions found on pages 35, 82, 90, 100 and 135, School Law Decisions of 1888.

In this case while the testimony shows that the removal to the site selected will bring the school-house quite a distance south of the center of the district, it is not in evidence that a suitable site might have been found nearer the center. It must be presumed that the board carefully weighed all the reasons in favor of and against the site chosen, and also that they endeavored to find the best site. The evidence is by no means conclusive that they did not select the best site obtainable. If in the opinion of the people an error has been made, it rests with the electors to choose a board favoring another location.

It is with reluctance that we reverse the decision of the county superintendent. There can be no question that he intended to seek substantial justice for the people of the district.

This decision does not prevent the board, if thought desirable to do so, from reconsidering the action by which the new site was chosen and selecting a different site.

But we can not find that the evidence supports the county superintendent in overruling the order made by the board and his decision is therefore

REVERSED.

J. B. KNOEPFLER,

February 26, 1892. *Superintendent of Public Instruction.*

R. G. W. FORSYTHE v. INDEPENDENT DISTRICT OF KIRKVILLE.

Appeal from Wapello County.

1. APPEAL. Where changes are effected in district boundaries by the concurrent action of two boards, appeal may be taken from the order of the board concurring or refusing to concur, but not from the order of the board taking action first.
2. TERRITORY. All territory must be contiguous to the district to which it belongs.
3. JURISDICTION. In change of boundaries by two boards, an appellate tribunal acquires only the same power possessed by the board from whose action appeal is taken, and may do no more than to affirm the order, or to reverse and do what the board refused to do.

The board of the above named district refused to concur in the action of the board of the district township of Richland, offering to transfer certain territory to the independent district. Mr. Forsythe, desiring the

transfer, appealed to the county superintendent, who reversed the action of the board and ordered the transfer of the territory under consideration by the two boards, with the exception of the N. W. quarter of the S. W. quarter of section 18, which the county superintendent directed should remain a part of the district township of Richland, and also ordered the transfer of the N. W. quarter of the N. W. quarter of section 18, which would otherwise be cut off from the district township to which it belongs. From this decision L. Jones, president of the board of the independent district of Kirkville, appeals.

This case turns on the power of the county superintendent to modify the order appealed from in the manner done by him. It is true that even if the board of the independent district of Kirkville had concurred in the transfer of the territory released by the other board, such order would not have been in conformity with the spirit of the law, because forty acres would then be left belonging to the district township of Richland and not contiguous to the remainder of the district. The county superintendent was led to conclude that the forty acres in question should be transferred, if any change of boundaries was made. But could the county superintendent so determine in this appeal? We think not. The board of the independent district might concur or refuse to concur. They might refuse to concur, and initiate a new proposition which the board of the district township could act upon, when appeal would then lie from the last action. But an attempt to change the order originally made would render it necessary to have such new action considered by the other board, before becoming effective, or even in order that the action could be brought within the power of the county superintendent to consider on appeal. For in a case of this kind no matter can come into the case on appeal, unless the second board, the one last acting, concurs or refuses to concur in the order initiated or proposed by the board first taking action.

It follows then that the county superintendent having only appellate jurisdiction, could not assume original jurisdiction and do what the board from whose action the appeal was taken could not have done. See *Dobbins and Briggs v. District Township of Salem*, page 24, School Law Decisions of 1888. Therefore we are compelled to hold that the county superintendent did not have the power to decide that the N. W. quarter of the N. W. quarter of section 18 should be transferred.

A careful investigation of the transcript leads us to believe that perhaps such a change of the boundaries as would transfer the residence of Mr. Forsythe to the independent district, might be desirable. Of course such transfer would include entire forties of land, and no territory could be separated from the district to which it should belong. Whether any change is best, must be determined by the boards interested, the action

of the board last acting being subject to correction on appeal. In order that the matter may come again without prejudice to the attention of the boards, the decision of the county superintendent is reversed and the case remanded to him to be reopened and heard again. We think he will be compelled by necessity to affirm the decision of the board of the independent district of Kirkville, in refusing to concur in the transfer proposed by the district township. This will leave all matters as nearly as possible in the same condition they were before any action was taken. It will then be in order for either board at any time to initiate such a change of boundaries as may seem demanded. There is no absolute necessity for a petition or request. A petition may be used to bring to the attention of the board the kind of action desired by the petitioners, but a board may act with equal directness without such request.

REVERSED AND REMANDED.

J. B. KNOEPFLER,

April 6, 1892. *Superintendent of Public Instruction.*

C. F. SCHEPPELE v. INDEPENDENT DISTRICT OF STONE HILL.

Appeal from Dubuque County.

1. APPEAL: *Rehearing of.* In refusing a rehearing, or in granting the same, unless the discretion of the county superintendent was unjustly exercised, his decision must be affirmed, on appeal.

2. ———: ———. To warrant another trial, material reasons must appear, to prove that a second hearing is desirable.

3. ———: ———. The presumption that the trial was regular and the proceedings full and complete, must be overcome by the reasons urged for the rehearing.

The county superintendent refused to grant a rehearing in this case. The affidavit of appeal from his decision of refusal alleges a large number of errors urged as having been made in thus refusing to allow a new trial. It is obvious that we are to determine only a single question. In refusing a rehearing, did the county superintendent err to such an extent as to warrant a reversal of his decision?

The motion for a second trial must be addressed to the judgment and discretion of the officer to whom the motion is presented. In granting or refusing to grant such a request, the county superintendent has original jurisdiction and his conclusions must receive from us the same consideration on appeal which he himself is bound to give to the discretionary acts of the boards. If error conclusively appears, a discretionary act may

be set aside. But every reasonable doubt inures to the benefit of the party whose acts are questioned.

In order that we may be warranted in reversing the decision of the county superintendent and remanding this case to him for a retrial, we must first be well satisfied that his discretion in refusing the rehearing was unjustly exercised. If he failed properly to appreciate the reasons urged, not giving full consideration to all existing facts within his knowledge, and without due examination arbitrarily refused the rehearing, then the consideration merited by his discretionary act is correspondingly diminished.

Having very carefully reviewed the testimony with reference to the several points of error urged, and closely examined the many authorities and references cited by counsel in the case, and other additional authorities, we are unable to find that the county superintendent erred in refusing the motion for a rehearing.

The real merits of the case seem to have been very clearly within full review at the trial of the appeal. Some trivial matters may have been omitted, but in the main, the leading issues were clearly outlined. After due deliberation, the order of the board was affirmed, and decisive reasons given for such conclusion.

Unless the county superintendent could bring himself to believe that another trial was best, he could not in justice to all concerned grant the motion in question. We do not find that the leading reasons urged were well supported. Although these leading reasons may not have been referred to frequently at the time of hearing, they were within the full knowledge of all the parties to the trial. We must presume that the fact of the nearness of the dairy and the boneyard, and the claim that the action of the board was influenced by private interests, were not disregarded by the county superintendent in making up his mind as to his final decision.

It must be assumed that the board would not select a site clearly unfit for use. A location upon swampy ground would be manifestly an unsuitable site. And the choice of a site so near any manufactory as to interfere unduly with the use of the school-house for school purposes, would be a palpable abuse of discretion. If any of these conditions actually exist in this case, as now urged in asking us to order a new trial, the aggrieved parties had ample opportunities to bring convincing proof of such facts into their case at the time of its trial, and if they could have found such testimony and failed to do so, they were derelict to their own interests. But the evidence fails to disclose unsuitableness in any of these particulars, or to indicate that the county superintendent failed in any manner to give serious and respectful consideration to every reason for

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J. B. KNOEPFLER,

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